Joint Legislative Audit Committee

1998 Year End Report

"Restoring Accountability in Government"

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Introduction

In the mid-1950's the California Legislature embarked on a bold policy to invest taxpayer dollars in a state infrastructure that would spur economic development and guarantee that future generations of Californians would enjoy the full promise of this Golden State - the best schools - the best hospitals - the best libraries. Freeways and aqueducts were built and improved from Eureka to San Diego. This was likely the most massive effort of its kind ever seen in America and perhaps in the world.

But with this policy came a great responsibility, a responsibility to ensure that government remained accountable to California taxpayers for the highest level of performance and for each and every tax dollar spent. The citizen legislators of the time saw the need to create by statute a watchdog Committee that would be free from political influence and the influence of special interests. To this end, they created the Joint Legislative Audit Committee (JLAC), a Committee like no other in the Legislature, a Committee charged with making government accountable to California taxpayers.

JLAC's Legislative Role

JLAC is unique in many ways. JLAC does not consider bills nor does it debate the merits of proposed legislation in the same manner as do standing committees of the Legislature. Independently, and through the Auditor General/State Auditor, JLAC investigates, studies, analyzes and assesses the financial practices and the performance of existing governmental and/or publicly created entities in California - in order to assist those entities in fulfilling the

purpose for which they were created by the Legislature. If laws or regulations are determined to limit the effectiveness of government, JLAC may propose changes in law. If government does not produce the intended outcomes, JLAC may propose changes to maximize effectiveness or even recommend the elimination of ineffective public entities and laws altogether. To accomplish these ends, the Committee was granted broad authority. Historically, for every dollar spent on auditing and investigating, JLAC and the Auditor General/State Auditor have identified $11 in savings.

JLAC's Authority

JLAC derives its authority from statute, the Joint Rules of the Legislature and the California Constitution. In addition to directing the work of the State Auditor, JLAC enjoys the authority to examine the performance and the financial affairs of any and all existing public entities in the State and to conduct hearings at any time and at any place in the State without restrictions.

JLAC's Structure

JLAC was crafted to be non-partisan and continues to fiercely guard its non-partisan tradition. JLAC is composed of 7 Members of the Assembly and 7 Senators. By statute, the Chair of JLAC is elected and serves until the position becomes vacant. Committee vacancies may occur upon the non-reelection to office of a Committee member. Legislators constructed a Committee that would not be subject to political whim or changing political agendas.

JLAC Today

Since its creation in 1955, the Joint Legislative Audit Committee, has saved California taxpayers billions of dollars by identifying fiscal deficiencies in public entities and providing needed direction to maximize the utilization of tax dollars. Furthermore, JLAC has assessed the structure and performance of hundreds of publicly created entities and provided the impetus and direction for significant changes within these entities whenever they failed to fully deliver the services to Californians that the Legislature intended and that taxpayers deserve and expect.

Over the past two decades, partisan agendas crystalized, and the Committee's significance began to wane. The results of insufficient oversight have become increasingly apparent in the crumbling infrastructure, the dismal decline in the quality of our educational system, and a revolt by California taxpayers demanding accountability in government.

In 1991, the citizens of California passed Proposition 140, term-limits, and returned citizen legislators to their government in Sacramento. But with the implementation of Proposition 140, a Legislature composed of pre-term limit professional politicians, decided to redirect resources away from oversight, drastically diminishing the Legislature's ability to ensure accountability in government. Though the authority of JLAC was preserved, due chiefly to the efforts of then Committee Vice-Chair Senator Ken Maddy and Committee Chair Assemblyman Bob Campbell, the exclusive control of the oversight budget was removed from the Committee. A substantial legislative oversight budget of the past was drastically reduced. The results were devastating. Since 1992, we have witnessed debacles such as:

* Bankruptcy in Orange County
* The shift of almost $15 billion dollars in local property taxes from cities and counties to the State's coffers
* The failure of grossly overpriced and ineffectual computer systems at a cost to taxpayers of hundreds of millions of dollars.

The list is too long to enumerate, but on a daily basis any California taxpayer can open almost any newspaper and find some new revelation of government mismanagement and waste.

Today, JLAC has aggressively set out to re-establish accountability in government with strong support from legislative leaders. JLAC has directed the California State Auditor to perform 21 fiscal and performance audits in 1998. Based on information brought before the Committee by Republican, Democratic and Independent Legislators most of the audits were commissioned by unanimous agreement among Committee members and all enjoyed bipartisan support. They include:

- Prison Industry Authority
- Department of Corrections
- Los Angeles Metropolitan Transportation Authority
- State Bar of California
- Fair Political Practices Commission
- Department of Education – Vocational Education
- Year 2000 Problem
- Board of Equalization/Franchise Tax Board

In 1998, the JLAC has also held a series of informational hearings relating to school construction and other issues, including:

- Design-Build
- Construction Management
- Site Acquisition and Environmental Issues
- Adults with Disabilities: Direct Care Staffing
- Cal-Mortgage

These hearings have resulted in further investigations into toxic school sites and substantial improvements in the regulatory process. The JLAC has released a number of reports resulting from investigations into the Los Angeles Unified School District, which include the Belmont Learning Complex in Los Angeles, Toxic School Sites and how school districts spend their money.

The JLAC Chair has vowed to continue this all out assault on government inefficiency and waste and to maintain the Joint Legislative Audit Committee's traditional nonpartisan objectivity, in the face of the most powerful entrenched government bureaucrats and the partisan agendas that protect government corruption and inefficiency from disclosure to the citizens of California.

California taxpayers deserve no less from their newly elected representatives.

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Committee Reports and Informational Hearings:

Educational Facilities and Personnel Survey Analysis

A survey of the facility needs and the personnel needs of Public School Districts was initiated by the Committee in 1997. The report was released by the Joint Legislative Audit Committee in February 1998 and the results are outlined below.

577 School Districts responded to the JLAC Needs Assessment Survey representing 58% of California's school districts. Responding districts serve in excess of 2.47 million students or approximately 44% of California's student population. The Average Daily Attendance (ADA) of responding districts ranged from Coffee Creek Elementary with an ADA of 7 to Fresno Unified with an ADA of 78,740. All of California's school districts were invited to participate.

JLAC believes that the results are illustrative of the needs facing educators and students throughout California. Many districts expressed their appreciation for the Legislature's interest and indicated to JLAC that State Government has never before asked the districts themselves to define their specific local needs related to facilities and personnel. Often, needs assessments rely exclusively on statistical information - and projections fail to account for the real experiences of California's front line educators at the individual school sites. Statistical analysis and concrete experience seldom interface. This study will hopefully help bridge that gap and provide a clearer picture of the challenges confronting teachers, administrators, classified employees, parents, and students in reforming California's system of Public Education.

In order to estimate the actual needs of California's schools, projections have been constructed based on the assumption that trends identified among reporting Districts would be relatively consistent had 100% of the Districts surveyed responded. It should be noted that the Committee believes that the estimates in this report are conservative and that in most instances the actual needs will be greater than projected, particularly in urban/high ADA districts. The projected totals are based on information reported in each of the six identified ADA groupings.

It should be further noted that this report focuses on the baseline 1996-1997 and 1997-1998 school years and on the specific effect of the implementation of the Legislature's Class Size Reduction (CSR) initiatives, enacted with the Governor's approval over the past two years, on California school districts. At the end of this report you will find data and projections from both the California Department of Education and the Department of Finance regarding estimated facility needs over the next ten years along with the baseline data developed in this report.

It should be noted that though the JLAC survey was voluntary, it is instructive that some large districts chose not to participate. Though some may believe that this lack of response may indicate that no needs exist, JLAC believes, that certain districts may lack the capacity to accurately assess their actual needs, either due to their size or due to an inability to communicate effectively with the school sites and stakeholders within their districts. We hope to work closely with these districts in the future.

ADMINISTRATORS

California school districts reported a continuing need for administrative personnel. In assessing their own needs, however, it should be noted that self-identified needs for administrative personnel from the districts account for a projected total of only 1116 new administrators, in a

State with over 1000 school districts and over 5.5 million students. Considering factors such as projected retirements, we believe that these figures illustrate that school districts in California have clearly moved in the direction of focusing available resources away from administration and toward more student oriented instructional activities. It should be noted, however, that our information also indicates that in some cases, certificated personnel, particularly those serving in non-classroom settings or non-instructional settings may at times either voluntarily or involuntarily assume roles and responsibilities traditionally and statutorily reserved for administrative personnel.

JLAC estimates a current existing need for 1,116 additional administrators at a total estimated cost $76,808,211. Reported cost was based on district responses and calculated to factor for the non-responding districts in each of the groups. While Group 6 reported a need for 131 administrators, we estimate a need for 455 at a cost of $33.5 million.

TEACHERS

Recruiting and hiring qualified classroom teachers remains a critical need for improving student performance in California public schools. Experts agree that the most important factor in determining whether a student achieves academic success is the quality of the classroom teacher. JLAC estimates, based on district self assessments, that today in California's schools, there is a shortage of at least 21,312 classroom teachers. Without aggressively addressing teacher training and recruitment, California's children remain at risk regardless of the scope or nature of reform efforts initiated by the Legislature, the Governor, the California Department of Education, or local school jurisdictions. The projected growth in student enrollment over the next decade makes the current shortage of qualified teachers all the more troubling and in need of addressing.

According to the district responses, JLAC estimates a total current need for 21,312 teachers. While JLAC estimates a total need of 8,697 teachers for Group 6, the low response rate by the largest of California's school districts undoubtedly has resulted in an artificially lower reported assessment of current needs and consequently, a lower estimate of total needs.

Costs of Addressing District Identified Teacher Needs

The JLAC Needs Assessment Survey indicated that to satisfy the current need for qualified teachers, if such teachers were readily available, the cost today would exceed $846.5 million. Costs of teacher recruitment, teacher training and education, and the need for more classroom teachers due to anticipated future enrollment growth after the 1997-1998 school year will significantly increase these costs if the Legislature and the Governor are truly committed to rebuilding California's educational system.

Based on the district responses, JLAC estimates a total cost exceeding $846.5 million in order to meet the current needs for qualified teachers. The major difference between our estimated cost and that reported by the responding districts can be found in the Group 6 results. This is due to the low response rate by those districts in Group 6. We expect that these districts will have the greatest need for additional teachers. California's largest school districts will undoubtedly struggle to find sufficient teachers to implement the CSR program as well as accommodate the expected growth in student enrollment.

EMERGENCY PERMITS

Based on district reports, there are currently 16,843 Emergency Credentialed teachers in California's public schools. Many of these teachers are committed to doing the best they can, but few have either the experience or the training to be able to effectively deliver quality instruction to our children. JLAC projections correspond closely with figures reported by the California Commission on Teacher Credentialing (CTC) regarding waivers granted. According to the CTC, 15,225 emergency credentials were issued to districts in 1995-96. In 1996-97, this total increased to 21,959. The number estimated by JLAC is based on district reports.

Although only 29% of the districts in Group 6 responded, these districts reported 2,256 teachers serving in classrooms with only an emergency permit. This number was comparable with that reported by Group 5 districts even though 50% of Group 5 districts responded. These findings indicate that children in high ADA districts are more likely to be in a classroom taught by a teacher with only an emergency permit. It should be noted that the failure of the Los Angeles Unified School District to respond to this survey clearly resulted in the low reported numbers by Group 6 districts. According to the CTC, Los Angeles Unified School District accounted for 5,179 of the Emergency Permits issued by the commission in 1996-97. The number of emergency permits issued to the LAUSD has increased in each of the last three school years. LAUSD was granted 3,144 emergency permits in 1994-95, and 3,277 in 1995-96.

Emergency Permits K-3

In grades K-3, where districts are struggling to reach their class size reduction goals, JLAC estimates from data provided by school districts that over 142,000 students in grades K-3 in 7,136 K-3 classrooms are being taught by teachers who have not completed a state certified teacher training and education program. It will be difficult to assess the effectiveness of either the new academic standards which are now being developed or the class size reduction program with such a large number of California's students being taught by minimally prepared teaching personnel. This problem is more troubling considering the large number of students in K-3 classes who may not be accorded the maximum benefit of CSR strategies due to the lack of the most highly qualified teaching personnel in their classrooms during these critical years.

The JLAC estimates show a total of 7,136 teachers with emergency permits in grades K-3. Again, despite the low response rate, Group 6 districts reported more emergency permits in K-3 than all other groups except Group 5. The smallest of California's districts represented by Group 1 reported only 2 teachers with emergency permits in K-3. This low number may be attributed to the fact that small districts apparently were not as heavily impacted by the CSR program as were larger districts. Many of these smaller districts reported declining enrollments.

The proliferation of underqualified teachers in California public schools along with the inadequate number of programs to train teachers bodes ill for the success of current educational reform efforts. With the quality of teachers being the number one indicator of student achievement, the Legislature will need to make a significant investment in teacher training and preparation to reach the goals we have set for our children. A unified effort will likely be necessary involving a reinvigoration of teacher education programs in California's institutions of higher learning along with a concerted effort to elevate the esteem in which the teaching profession is held to a level commensurate with its importance to our children's success and to the future of our state.

CLASSIFIED EMPLOYEES

Classified employees provide the foundation that keeps our schools running. Over the past number of years, significant reductions in classified personnel due to budget considerations have led to deteriorating facilities and the elimination of many support programs. With the improving economy and the strong commitment of Californian's to rebuild our educational system, a reinvestment in classified personnel will be come increasingly important. JLAC estimates that California schools will need to fund approximately 9,238 classified positions just to address the immediate needs of California school districts. It should be noted that, due to severe budget constraints, reports have been received indicating that some districts have retained temporary employees in positions normally reserved by statute for classified employees – employees who are traditionally identified and hired pursuant to the state and/or locally mandated competitive hiring process. To ensure adequate staffing and the retention of the best and most qualified personnel in our schools, JLAC estimates an immediate need of approximately $176 million to rebuild the classified service in California schools.

Classified Employees 1996-1997

Based on the district responses, we estimate a total current need for 9,238 classified employees in order for school districts to maintain their current level of service. Regardless of whether districts are traditional structured or subject to the jurisdiction of a merit system, districts were asked to indicate the number of classified employees that they would need only to maintain their current level of services.

Classified Employees 1997-1998

Districts were also asked to assess their needs for additional classified staff based on anticipated changes for the 1997-98 school year. Based on the district responses, we estimate a total need for 3,897 additional classified staff. As expected, the majority of need will be by the largest of the school districts represented by Groups 5 and 6.

Estimated Costs of Needed Classified Employees 1996-1997

Based on the district responses and solely for the purposes of this survey, we used an average cost of $22,000 for classified employees. As a result, we estimate a total need of $176 million. In order to meet the need for classified employees based on any planned changes, the tables below show a total estimated need of $55 million.

Estimated Cost of Needed Classified Employees 1997-1998

It is clear that to rebuild our schools, not only will the classified service be counted on to provide existing services, but will also be subject to expansion in order to those services that have been reduced or eliminated due to budget constraints over the past decade.

CLASSROOMS

Based on the survey responses, JLAC estimates the total immediate need of at least 11,310 new classrooms in California's public schools. After adjusting projections to compensate for the relatively low response by the larger districts, JLAC estimates that districts in groups 5 and 6 need to establish approximately 3,410 and 3,459 classrooms respectively. Many of the smallest school districts such as those represented in Group 1 reported little or no immediate need for

additional classrooms based on either anticipated increases in student enrollment or the CSR program. Some of these districts reported that they were not impacted by the CSR program and did not anticipate enrollment growth, but rather anticipated a decline in enrollment**.**

Classroom Costs

School districts were asked to estimate the cost for funding their needs for additional classrooms. Based on the districts' responses, JLAC estimates a total investment of $760.6 million will be required immediately to address current classroom needs. JLAC estimates, based on data provided by individual responding districts, the total price tag for adding classrooms in ADA group 6 alone will exceed $192.7 million. In large part, we found, these classroom needs will be addressed by the acquisition of "portables" whose placement at existing school sites may compromise the integrity of playground and student recreational facilities.

NEW SCHOOL CONSTRUCTION

In question 3k of the survey, school districts were asked whether the CSR program or projected growth in student enrollment would require the construction of any new schools in their districts before the year 2000. Of the 550 districts responding to this question, 240 reported a need to build at least one new school before the year 2000. These responses identified a particularly critical need for new school construction in California's largest districts, represented in Group 6. Of the 16 districts that responded to this question, 14 reported having to build new schools. Consequently, Group 6 districts represent the largest estimated cost for new school construction. Based on the survey results, JLAC estimates the total cost for building new schools to meet the existing needs of California's schools to exceed $6 billion. This estimate of the immediate needs facing California's school districts is based on data provided by the districts themselves.

Availability of Sites for School Construction

156 districts reported a lack of available space for constructing new schools. Urban districts, where enrollment growth is accelerating at the fastest pace, will be confronted with significantly higher costs related to land acquisition than districts that are not located in an urban setting. When examining school construction costs related to urban districts the Legislature will be required to further subsidize land acquisition in these areas if school construction strategies are to succeed.

Displacement of Existing School Site Programs

The findings of the JLAC survey indicate that several issues related to the CSR program and enrollment growth have not received the attention necessary for a successful implementation of the current educational reform initiatives of the Legislature and the Governor. Facility shortages have translated into a marked reduction of specialized programs and mandated student services such as special education, childcare, libraries, and computer labs. School districts have reported no other option but to displace many of these programs and services in order to fulfill the facilities demands of the CSR Legislation.

While class size reduction has been an educational priority of the Legislature and the Governor over the last two years, many of the programs and services displaced by the CSR requirements remain in the statute, and as such, continue to be an obligation for school districts.

Child Development – Child Care

California families need quality child development and child-care options. As more parents and guardians are included in the workforce, early morning and late afternoon child-care have become necessities. Parents and guardians often rely on their child's before-school and/or after-school program to provide this service. However, according to the results of the Needs Assessment Survey, districts have been forced to reduce or eliminate school-operated child-care due to the impact of CSR. This reduction of school operated child-care places an additional burden on working parents, and serves to diminish the amount of time that children spend in a controlled learning environment.

There is no question that the availability of quality child care and child development programs is crucial to the success of many students and their families. As a result, in 1989 (c. 1394) the Legislature declared its intent for public school-operated child-care, by stating,

"The Legislature has stated its intent that early childhood education and child development programs be a concomitant part of the educational system by providing young children an equal opportunity for later school success. Those programs are considered by the general public to be an integral and essential part of the state's public education system.

Early childhood education programs for children of low-income families have been shown to increase high school graduation rates and college entry rates, to reduce the need for special education and grade level retention, and to reduce high school dropout rates."

Despite the Legislature's stated intent to foster and support childcare and early childhood education, the CSR program has resulted in the displacement of these programs by districts throughout the state. With schools forced to utilize their facilities to meet CSR requirements, districts will find it increasingly difficult to continue to make space available for programs providing child care and child development.
Computer labs have also fallen victim to displacement, even though the Legislature has repeatedly declared its support for computer education and training in California's public schools. As stated in Education Code 44276 the Legislature finds and declares,

"*California's public school pupils need quality instruction and support in the areas of computer education in order to develop the skills necessary for entry into an increasingly technological society. The Legislature recognizes that computers and other technologies are an integral part of the contemporary society and the state educational system."*

Education Code 51006 finds that,

"Without adequate and early exposure to a basic computer education and computer resources, many students may be placed at a significant disadvantage in their opportunities to secure success in academics and the job market in the future."

However, as evidenced by the results of this survey, districts will certainly find it difficult to add, maintain or even preserve functional computer labs. Until facility shortages are appropriately

addressed, class size reduction goals will only be accomplished by displacing existing computer labs at individual school sites.

Special Education is another program that districts have reported significant program displacement as a result of the CSR requirements. Education Code Section 56000 states that,

"The Legislature finds and declares that all individuals with exceptional needs have a right to participate in free appropriate public education and that special educational instruction and services for these persons are needed in order to ensure them of the right to an appropriate educational opportunity to meet their unique needs."

Despite this declaration of every student's right to receive a quality public education regardless of their unique needs, school districts are being forced to displace Special Education programs from their campuses to meet CSR requirements. With a severe facility shortage facing districts throughout California, districts will undoubtedly continue to find it difficult to house Special Education Programs.

The responding districts also listed libraries as one of the top specialized programs and/or services displaced by CSR. Although Education Code Section 18100 requires that each school district,

"provide school library services for the pupils and teachers of the district by establishing and maintaining school libraries or by contractual arrangements with another public agency,"

districts have found it necessary to displace libraries as well. Some districts that reported school library displacement have either entered or are planning on entering into library joint-use arrangements with other local public entities in order to meet their obligation to maintain library services.

Joint-Use Facilities

Our findings here indicate that "joint-use" arrangements between school districts and local public entities may be an increasingly attractive option for districts facing a shortage of facilities and/or physical space.

Education Code Section 17750 and 17751 authorize school districts to enter into joint-use agreements with local public entities for the use of libraries, parks, auditoriums, and recreation facilities. As defined by these code sections, "joint-use" is an arrangement in which a school district and a local public entity enter into an agreement to share the use of a facility by both students and the general public. One third of districts responding to the survey reported participating in or planning on entering into joint-use arrangements with local public entities.

The last statewide education bond included $25 million for the facility construction of joint-use facilities throughout the state. In April, 1997, the State Allocation Board (SAB) adopted regulations for the disbursement of these funds. The SAB received 76 applications totaling $51 million for the joint-use funds. However, due to the limited funds made available for joint-use projects under Proposition 203, only 37 of these applications were funded at a total of $23 million.

With school districts anticipating a continued facility shortage, joint-use arrangements appear to be an increasingly attractive option. Identifying programs that have been displaced and that may be housed in joint-use facilities may alleviate some displacement at a relatively low cost.

OTHER:

It appears that yearly additions to the Education Code add to the burdens facing school districts. Many districts asserted that the Education Code should be overhauled completely, giving more control to the local school districts and removing it from the state. Many districts also reported that they are required to spend a significant amount of their time on administrative duties causing resources to be diverted away from students' needs and the requirements of the basic instructional program. Some districts claim that the Education Code requires teachers to be more than just educators, noting that teachers now serve as administrators, social workers, and peace officers.

Among small school districts, it was noted that even though their administrative staff is much smaller than the large school districts, they are required to perform the same administrative duties and submit just as much paperwork, though they receive less funding. Many of the programs are not available to small school districts because they do not have the requisite number of students or because they do not have the ability to implement the programs due to lack of staff.

Facilities funding and red tape involved in construction projects were another major concern of school districts. There was a virtual consensus among districts that school construction bonds should be subject to a simple majority voter approval threshold and that the present requirements for new construction for schools are overly restrictive. Districts were concerned with proposed caps in developer fees, the 50/50 local funding match requirement, and bidding requirements that may inhibit the ability to build new schools.

For the most part, the Class Size Reduction (CSR) program was hailed as a positive step in the rebuilding of California's educational structure; however, CSR has clearly caused significant problems in the area of facilities. We found that not all school districts are receiving the necessary CSR facilities funds and that many districts are losing playgrounds to portables. The administrative requirements of CSR are time consuming and restrictive and cause many school districts to lose CSR funding. CSR has also resulted in some overcrowding in grades 4-8 and the loss of essential programs. CSR may not be a viable approach in the smallest school districts which only have one or two classrooms and cannot break down the classes into smaller sizes due to a lack of funding for staff. Many schools that are presently able to participate in the CSR program, but once growth occurs, they will lose the ability to participate due to lack of facilities and the district's inability to add new facilities.

Districts reported that special education and bilingual education requirements are underfunded or unfunded in many districts and encroachment on general fund resources may compromise the effectiveness of the regular educational program whenever districts attempt to comply with the requirements of these programs. Districts expressed concern about the lack of qualified bilingual and special education teachers and the difficulty in finding qualified credentialed teachers in all categories. Districts stated that they are having to turn away potential teachers because those teachers are not credentialed in California, but are only credentialed out of state. Many districts felt that the process for out of state teachers to receive California credentials should be made easier to allow school districts to have a wider pool of teachers to choose from. It was further reported that many of the smaller districts are having a more difficult time finding

credentialed teachers because teachers prefer working in larger school districts because the salary is higher than at the smaller school district level.

School districts also noted that unfunded mandates, lack of funding for transportation needs, lack of state standards, and lack of funding for state testing requirements were areas which restrict the district's ability to provide the best possible level of services to their students. For more detail on how individual school districts responded, please contact JLAC.

Where Has All the Money Gone?
School Construction in Los Angeles Unified School District

This report was released by the Joint Legislative Audit Committee in July 1998. A synopsis of the report follows, for a copy of the full report contact the committee.

Introduction

As school districts apply for limited state resources to build, modernize, and maintain school facilities, they will inevitably come under increasing scrutiny. In no other district is this truer than in the Los Angeles Unified School District (LAUSD). Over the years, LAUSD has attempted many creative solutions to the growing problem of finding classroom space for all of its students. However, some of the innovative approaches attempted by LAUSD have been called into question. For example, a 1992 Little Hoover Commission report entitled No Room for Johnny: A New Approach To The School Facilities Crisis, criticized some of LAUSD's facilities decisions. As the subject of such high profile criticism, LAUSD has come under even closer scrutiny than many other school districts with regard to construction practices and priorities. This report is not meant to serve as additional criticism of the district, but to articulate factual information regarding the district. With a district as large as LAUSD's, however, navigating the bureaucracy and getting definitive information proved at times to be difficult.

What follows is a representation of the district with respect to four specific areas of interest: enrollment growth, seat capacity, school construction costs, and land acquisition. Because each school district owns and is responsible for its own property, there is no centralized state data base that reflects in any comprehensive manner land holdings, site acquisitions, or the condition of pre-existing sites. The data used in this report was obtained primarily from the LAUSD, and while it may not be as comprehensive as we would like (as the district has not assiduously tracked certain information), it may serve to provide a framework for further discussions that will occur as California confronts the challenge of providing enough seats for its exploding student population.

Los Angeles Unified School District (LAUSD): Background Description

The Los Angeles Unified School (LAUSD) is the second largest urban school district in the country (second to New York City), serving approximately 800,000 students. Like many other districts throughout state, LAUSD has experienced a significant increase in its student population over the past 15 years. The district's K-12 population has increased from a total of 540,903 students in 1981 to 681,505 students in 1997. The district is governed by a seven-member elected school board with one board member representing each of its seven geographic districts.

In 1981, there were just over 730 schools in the LAUSD. The information provided to the Committee indicates that since 1981, there has been a net increase of seven elementary schools, no Middle Schools, and no High Schools that serve the wide-ranging needs of Los Angeles' growing and diverse student population. In order to accommodate the city's enormous growth in student population, LAUSD chose to reconfigure its grade levels throughout the district from K-6, 7-9 and 10-12 to K-5, 6-8 and 9-12. This reconfiguration has freed up more space in the primary grades where student population has increased the most, nearly 40 percent since 1981. In addition to the traditional K-12 schools, LAUSD has created specialized sites in order to accommodate a wide range of student interests and changing student needs.

In an attempt to serve this burgeoning population, LAUSD has implemented multi-track, year-round instruction for approximately 46 percent of its total enrollment, more than 60 percent of which is at the elementary level. According to district representatives, LAUSD needs 20,000 new seats immediately and will require over 75,000 within the next decade, creating an acute need for new school construction and increased expenditures on the modernization and maintenance of existing structures.

LAUSD's service area includes an exceptionally diverse population of close to 4.5 million and an area encompassing 708 square miles. With over 88 languages spoken and minority students representing 77 percent of the district's total student population, LAUSD is among the most diverse school districts in the country. It goes without saying that meeting the needs of a district so large and so incredibly diverse is a daunting task at best. In 1996, there were a total of 64,249 school district employees, nearly 32,000 of whom were certificated teachers. The budget for LAUSD in 1995-96 was $4.2 billion. Eighty-four percent of revenues came from the state's general fund and from property taxes, while 12.1 percent was federal money. Local income accounted for the remaining 3.3 percent. Slightly less than 54% percent of the district's budget was spent on employee salaries and benefits in 1997-1998, a drop from almost 70% in 1993-1994. The remaining funds were spent on materials, utilities, land, buildings, outside contracts, different program related elements, and the reserve. Though the budget has grown to approximately $5.8 billion in 1997-1998, the relative revenue stream has remained proportionately similar.

The Committee found that between 1981 and 1996, the number of students served in the LAUSD grew exponentially, while new school construction and modernization efforts lagged significantly behind.

In order to provide a snapshot of the LAUSD, what follows is a breakdown of enrollment trends, district budgets, seat capacity, and land acquisition expenditures, including but not limited to data involving new school construction, property condemnations, and modernization projects over the past two decades.

It should be noted that this report does not address the dramatically increased facility needs faced by California school districts directly related to the implementation of class-size reduction (CSR) in California. The Joint Legislative Audit Committee Report entitled, ***"California's Public Schools: A Needs Assessment,"*** analyzes the impact of the class size reduction program on school facilities requirements statewide and is available from the Committee. Although the LAUSD failed to respond to the JLAC survey that provided the basis for that report, in time to be included in the results, it is reasonable to assume that LAUSD is facing facilities concerns related to the CSR program that are similar if not more acute than those reported by other districts.

ENROLLMENT TRENDS

Notable in the enrollment trends is a precipitous drop in enrollment in grades 10-12. Particularly striking is the drop in enrollment among 12th graders, a troubling phenomenon that may require further research.

While there has been an enrollment increase in all grades but the top three, school construction for K-12 has lagged significantly behind enrollment growth. In terms of school construction by school type, there were 12 elementary schools built over the past fifteen years, with a net

increase of slightly more than 11,000 seats. By 1996, there was, on average, an approximate 40 percent increase in student enrollment in the primary grades K-6. Clearly, there are not enough seats for the sheer number of students in LAUSD. In grades 7-9, new school construction increased by one school, though that particular project has experienced financial difficulties and is plagued by environmental concerns.

According to the district, there were 71 junior high schools in 1981 and there are still 71 to date (again, the district's reporting inconsistencies make definitive conclusions difficult to reach). The junior high school student population has grown an average of 18 percent. Senior high school students have been dropping out at an alarming rate across the state, and those in LAUSD are no exception. The crisis in housing senior high school students appears to be less critical than it is for those students in the lower grades because an alarming number of senior high school students are not graduating. LAUSD has experienced an average decrease of 6.6 percent in high school enrollment. Twelfth graders are the hardest hit, with a 12.8 percent drop in enrollment since 1981.

NEW SCHOOL CONSTRUCTION

LAUSD has undertaken a variety of construction projects. According to the district, expenditures for new school construction at the elementary level have totaled $226,844,372 since 1987. The cost factors taken into account for the total expenditure number include the following: site acquisition (purchase of property, relocation costs and appraisals); plans (architects' fees, preliminary testing); construction (building construction, demolition, general site work); tests (soil tests); inspection; furniture and equipment. According to these numbers, the range of new school construction costs for elementary schools over the past decade has ranged from $10,356,930 to $36, 392,235 per school. The average cost per elementary school is $18,903,697 in LAUSD. In an effort to gain a rough estimate of cost per pupil, including land acquisition costs, we divided the total cost of schools by the net seats. Roughly then, the cost per pupil per seat in LAUSD for new school construction over the past ten years has been $21,225 dollars. There were not enough new junior high schools built over the past ten years in LAUSD to obtain even a reliable average, so the solitary figure for cost per pupil at the junior high level is $25,398 dollars. Cost per pupil estimates cannot be obtained for senior high students as there are no reported new senior high schools built since 1987. It should further be noted that the final costs will likely rise as schools are completed and contracts are closed out.

In addition to new construction projects, LAUSD has utilized district and state funds to build additions to existing schools. The following chart represents those additions since 1987, either completed or under construction.

ADDITIONS TO EXISTING SCHOOLS

Again, in an effort to gain a rough idea of cost per pupil for these additions to existing classrooms, we used the information provided by the district to obtain the following the results. As mentioned, there were 30 elementary schools with addition projects since 1982. By doing an analysis of the data provided, we calculated that the construction cost-per-seat for elementary additions was roughly $19,945. The average cost for additions per elementary school was $5,455,000. For multi-level schools (those with any configuration of grades K-12), there were only 3 additions since 1988, and the cost-per-seat was $16,162 with a cost of approximately $11,000,000 per school. There were 4 middle school additions in the past 8 years and the cost-per-seat was $29,698 — the average cost for middle school additions was approximately $10

million. Since 1988, there were 10 additions projects initiated at the high school level. The range for the additions was $3,818,368 to $13,814,439. The average cost-per-seat was $15,961 and the average cost-per-school was $8,304,000.

Looking back at new school construction costs, one could draw the conclusion that costs vary significantly and building new schools may not be any more expensive than expanding old ones. Tracking for new school construction at the primary grade levels began later (1987) than did tracking for elementary school addition projects (1982). Also, there were only 12 new schools built, whereas there were 30 additions. These factors necessarily are reflected in the numeric outcome. Attention needs to be drawn to the fact that the district's tracking of these expenditures began in 1982 in some instances, such as for the elementary schools, while tracking did not begin until much later (1990) in other instances, such as for the middle schools. These inconsistencies in LAUSD reporting practices do not allow a truly comprehensive analysis of the data provided, but do allow us to gain insight into estimating the true cost of school construction in LAUSD.

LEASE-PURCHASE NEW CONSTRUCTION AND MODERNIZATION PROJECTS COMPLETED OVER THE PAST DECADE RECEIVING STATE ALLOCATION BOARD APPORTIONMENTS

There have been over 162 modernization projects undertaken in the past fifteen years in LAUSD, the total cost for which is in excess of $196 million. But, according to one district document, total modernization projects have cost over $219 million since 1985 (for all schools, including but not limited to adult and special education schools). Of that, just over $200 million has been spent on modernization at the K-12 level:

- --modernization projects at the elementary level have cost $133,583,802
- --junior high modernization projects have cost $36,072,468
- --senior high projects have cost $30,971,519
- --On average, modernization projects in LAUSD have cost approximately $1.3 million

SEAT CAPACITY

LAUSD has just over 900 schools, more than half of which are K-12 schools. The remaining schools range in the services they provide from infant centers to adult education. Having enough capacity to serve the growing student population has been an ongoing concern. According to numbers presented by the district, seat capacity has not kept up with student growth, and there is cause to question how the district can create capacity that is commensurate with growth. In an effort to gain some insight about how the district has responded to the increase in student population by increasing seat capacity, we include a district comparison between 1986 and 1997 for K-12 schools.

Capacity has increased the most at the senior high level (20.8 percent), but the senior high student population has decreased by 6.6 percent over the years. The second largest capacity increase has occurred at the elementary school level (10.5 percent), yet the largest enrollment increase (40 percent) occurred in the primary grades K-6. It is interesting to note that the enrollment increase of 40 percent in grades K-6 (since 1981) has not been met by any parallel capacity increase. Junior high schools have experienced the most modest capacity increase of all (5.4 percent), and enrollment has increased an average of 18 percent.

Although LAUSD was able to provide data on seating capacity for the years 1986 and 1997, the district was unable to supply the committee with seat capacity data for each individual year. It was the intention of the Joint Legislative Audit Committee to chart the comparison between LAUSD's total student enrollment and seat capacity from 1986-97. A year by year comparison could have provided a basis for understanding how class size reduction and the use of the multi-track year-round school scheduling have impacted seat capacity at LAUSD. Unfortunately, after discussions with the LAUSD, the district indicated that due to the size of LAUSD and the different methods used to calculate seat capacity, they were unable to provide us with total seat capacity figures for all years between 1986-97. Without knowing the comparison of the total seat capacity with that of enrollment, it is difficult to assess the actual construction needs of LAUSD. A side by side comparison of the number of students enrolled versus number of seats available is information that would be beneficial for all school districts to have when addressing school construction needs.

BUDGET HISTORY

The entire amount budgeted over the past 18 years has exploded, with a 276 percent increase since 1978. What emerges is a picture of a school district whose budget has increased dramatically —276 percent over the past 20 years—without a parallel growth in school construction. entire operating budget has increase from $1.5 billion in 1979 to over $5.8 billion in 1997. In addition to this funding explosion, there has been a similar explosion of students, a 26 percent increase in overall student enrollment, from 540,000 to more than 870,000 in 1997.

The school construction that has occurred has taken place at the elementary school level, yet not on par with the increase of elementary school students. According to the numbers provided to us by the district, only one new junior high school has been built, but the student population has increased by 18 percent. There have also not been any new senior high schools built, but this is the least troubling finding since our figures show an approximate decrease of senior high school students by 6.6 percent. What is troubling at the senior high level is more the decline in enrollment than the lack of new school construction.

Of the approximate $5.8 billion 1997-1998 budget, $454 million (approximately 7.8 percent) has been spent on new construction to create an additional 32,452 seats, costing on average $13,990 per seat. According to district representatives, projected expenditures on new permanent construction over the next ten years will be approximately $866.7 million to create 48,607 seats. This roughly translates into $17,831 per seat (Dollars per seat are not adjusted for inflation, do not include land acquisition costs, do not include cost for adding portables to sites to create seats, and assumes a State match for most of projects). For your convenience, we have provided an appendix at the end of this report representing how district money has been spent over the years.

Senate Education Chairman Senator Leroy Greene recently requested the Legislative Analyst's Office (LAO) to study statewide average per-pupil construction costs. Not surprisingly, there is some disparity in the statewide average per pupil cost and the LAUSD average. The LAO study looked at cost information from the Office of Public School Construction (OPSC) on 162 growth-related projects for which the State Allocation Board (SAB) has approved construction bids. According to the LAO's findings, the vast majority of the projects approved (154 of the 162) were approved after the voters approved the March 1996 school bond measure. The projects were located in 31 of California's 52 counties, though approximately 60 percent of the projects were in seven counties. In rank order, they are as follows: Riverside (26 projects), Los Angeles (15), Sacramento (14), San Bernardino (14), Orange (10), Fresno (9), and San Diego (9). While

the overall estimates are important and of value for purposes of determining possible future action with respect to school construction costs, it is worth noting those projects specific to LAUSD.

The only growth projects that are germane to this report are those that occurred in K-12. Out of the 15 growth projects for LAUSD only 4 fell under the rubric of LAO reviewed projects, and all four were elementary growth projects. The LAO estimated that the average costs for 3 of the 4 LAUSD projects were $14,455. It is important to remember, however, that this average cost-per-pupil does not include land acquisition costs. Building costs for the three projects averaged at $11,375 and site development averaged in at $3,080. The fourth project was substantially different from the other three in that its average cost-per-pupil was $35,524 (building costs were $28,454 and site development was $7,070).

NEW LAUSD GROWTH PROJECTS-AVERAGE PER-PUPIL COSTS

LAUSD is the largest school district in the state and land acquisition alone is a daunting task. Due to its urban setting, land for school construction is both scarce and extremely expensive. As such, many schools are forced to build upwards, creating multi-story schools, the result of which brings a significantly higher price tag, though research indicates that the cost for multi-story schools only substantially increases when the school is over three stories. According to the LAO report, the average land cost per pupil was about $2,400 (the median cost was about $1,400 per pupil), but costs varied from $9 to over $18,000 per pupil. Land costs for LAUSD are significantly higher than other districts, and unfortunately the price of real estate is something over which the district has little control.

There are no easy answers. California is facing a dramatic increase in its K-12 student population by the end of the decade. Today's 5.1 million students enrolled are expected to grow in excess of 7 million by the year 2000. According to a 1992 report by the Little Hoover Commission, five counties, all in southern California (Los Angeles, Orange, Riverside, San Bernardino, and San Diego), are projected to account for nearly 56 percent of the state's student population. The cost for school facilities to meet the increased needs of all these students will be approximately $45 billion. In many ways, LAUSD faces more than its fair share of this challenge. Many have argued that LAUSD is simply too large, that it needs to be reorganized to become more manageable and more accountable. In our experience, obtaining information that was either comprehensive or reliable was extremely difficult. The information we received has not been consistent between departments, and at the very least, it would benefit the citizens of California and the students of the LAUSD for the district to have a single unit dedicated to tracking and keeping basic data with respect to it operations.

Acquiring Urban Land for Public School Construction and Related Environmental Concerns

June 17, 1998
A POST HEARING BRIEFING

EXECUTIVE SUMMARY

On June 17, 1998, an informational hearing was held by the Joint Legislative Audit Committee. The hearing examined land acquisition policy and practice in relation to new school construction projects. During the course of the hearing, witnesses identified two distinct areas of concern:

1. Acquiring land for new schools in congested urban settings;
2. Managing the conflict that may arise from local, state and federal environmental regulation.

Considerable testimony focused on the Los Angeles Unified School District's (LAUSD) Jefferson Middle School, a story that dramatizes what can go wrong when districts build schools on contaminated land.

Witnesses from the LAUSD and the San Diego City Unified School District (SDCUSD) described how their districts acquire land for new schools in crowded urban neighborhoods. The LAUSD described a process that appeared to be driven largely by administrative expedience, where members of the community are merely informed rather than involved in the decision making process. It is the clearly stated opinion of the LAUSD that purchasing industrial land contaminated with toxins for the purpose of building new schools is at times unavoidable.

SDCUSD testified to an approach that is significantly different than LAUSD's top-down method of land acquisition. The SDCUSD explained that they bring the community into the process from day one as active collaborators. It is the SDCUSD's opinion that this high degree of collaboration has resulted in their district having never seriously considered the use of contaminated land for new schools. This laudable aversion to building on toxic properties by the SDCUSD exists despite this district having recently built many schools in crowded urban neighborhoods.

THE STORY OF LAUSD'S JEFFERSON MIDDLE SCHOOL

The LAUSD purchased a highly toxic 15-acre site for their new Jefferson Middle School in 1990. The site is located in a highly industrialized area and directly across the street from a federal superfund site. Soil and water beneath the Jefferson site not only contain the known carcinogen Chromium 6 at levels 60,000 percent higher than allowed by law, but other harmful toxins as well. The LAUSD claimed they removed and replaced the top 15 – 20 feet of soil at the site prior to building the new school. The JLAC subsequently determined this was a false representation of the facts. In addition, the LAUSD arguably hid the extent of the toxic problem from state environmental regulators. There is every indication that the district not only failed to properly assess the contaminants at the Jefferson site, but may have withheld what they did know from state officials in a rush to receive $11,834,812 in state land purchase funding.

Jefferson's toxic problems became known after a state EPA scientist noticed by coincidence, while across the street working on the clean-up of the neighboring superfund site, Hard Chrome Products, that a school was under construction. The LAUSD subsequently was required to

conduct new toxic assessments that in turn demonstrated the extent of the contamination problem. Today, soil and water assessment efforts are under way with the expectation that remediation will shortly follow – all assessment and remediation efforts are under the strict supervision of the California Department of Toxic substance control. There is concern, however, that not only are these mitigation efforts after-the-fact, but the precise nature of their success is unknown. Students began attending classes at the Jefferson Middle School site this fall.

Financial liability concerning the mitigation of the contaminated groundwater is very much an outstanding controversy. LAUSD may be named a responsible party to the groundwater clean-up effort at a yet to be determined cost to the public. Similar groundwater remediation efforts have run in excess of $1 million a year for extended periods of time. On July 10, 1998, the LAUSD formally requested that the State Allocation Board (SAB) reimburse the district for $513,000 in toxic clean-up costs at the Jefferson site. The SAB has yet to approve this additional funding request.

Other issues discussed at the hearing:

- Identification of toxic contaminants prior to eviction by eminent domain requires cooperation with those who may be unwillingly evicted.
- Districts that otherwise practice due diligence can be tangled in the overlapping authority and conflicting/changing rules of various government oversight agencies.

BUILDING SCHOOLS IN URBAN SETTINGS

Urban school districts like San Diego and Los Angeles do not always have the option of buying vacant land for new schools. Instead, urban districts often have the complicated task of acquiring land through the process of eminent domain, where private land is taken by a public agency through force of law.

Oftentimes, controversy arises when choosing the type of land to be acquired for new a school project: desirable residential or business properties vs. otherwise vacant or unwanted industrial land that may be degraded by toxic contamination.

The Los Angeles Unified School District (LAUSD) and the San Diego City Unified School District (SDCUSD) offered testimony that demonstrated two very different approaches to acquiring urban land. The LAUSD represented this process as a case of either/or: either evict residents and business owners from their property, and thereby reduce the already limited supply of low-income housing and local jobs, or remediate land contaminated by industrial use. In contrast, the SDCUSD stressed active collaboration between community members and district staff as a means of avoiding even the consideration of contaminated property.

RECOMMENDATIONS

- The Legislature may wish to consider ways to motivate districts to work collaboratively with their constituents.
- Districts must be held accountable and understand that it is clearly unacceptable to violate or attempt to circumvent existing environmental law. The state may wish to consider making

willful violation of the education code an offense punishable by personal fine or the threat of jail.

- The Legislature may wish to develop a list of “red flags” that trigger exhaustive environmental discovery when such items as the following exist:
  - A railroad track along one side of the property;
  - Heavy industry or manufacturing on or near prospective school sites.
- Local districts may wish to consider making their environmental staff independent and distinct from real estate and business staff in order to ensure the utmost scientific objectivity in environmental assessments.
- The Legislature should determine ways to assist districts with the awkward dynamics of eminent domain discovery.
- The Legislature may wish to create an office within an existing department that serves as a clearinghouse and liaison between local districts and the many state and federal environmental oversight agencies.
- The Legislature should increase the field and the oversight staff of the Department of Education to avoid the possibility of bad decisions being made due to willfulness or lack of diligence on the part of an overburdened staff.
- The work of the various state agencies responsible for land acquisition and construction assistance and regulation should be coordinated. The legislature may wish to grant the expanded enforcement and oversight authority to those agencies to ensure district compliance with the rules and regulations promulgated by the legislature and other regulatory bodies for the health and safety of our schoolchildren.

Shortly after the above report was issued, the JLAC became aware of additional and provocative concerns related to toxically contaminated school sites. The following report was issued in response to these concerns.

Toxic School Sites In Los Angeles: Weaknesses In The Site Acquisition Process

August 1998

EXECUTIVE SUMMARY

Currently, some California public schools are being built on toxic lands. Provisions of the education code specifically direct California school districts to select only those sites that are free of toxins, or sites that can be efficiently cleansed of toxins, for the construction of schools. The state provides a program, that when properly followed, should ensure that local districts complete their site acquisition duties with due diligence. This system, however, appears to have broken down to the extent that we have identified a minimum of nine schools in the Los Angeles Unified School District (LAUSD) where:

Local agencies suspected serious toxic contamination prior to state approval;
State authorities knew toxins were suspected at these sites prior to approval;
The state nonetheless approved acquisition of these sites;
Schools were built, or are in the process of being built, on these suspect sites.

All of the above occurred without any indication that those toxins initially suspected were properly identified and/or sufficiently cleaned-up.

One of the nine toxic sites, Jefferson Middle School (JMS), was accidentally discovered towards the end of its construction in 1995 by the California Department of Toxic Substance Control (DTSC). The DTSC stumbled upon the new school site as it is located across the street from a federal Superfund site. Concerned that the JMS site was never adequately assessed or remediated after reviewing pertinent records, the DTSC took control of the environmental oversight process. The resulting assessment not only discovered toxic soil but groundwater contamination at toxic levels 60,000 times above minimum health standards as defined by the Department of Health Services (DHS). In the instance of JMS, the LAUSD was forced by the state to conduct an additional assessment that resulted in dramatic remedial clean-up efforts that otherwise would never have taken place had the District remained in control of the project.

Now a second and third LAUSD school, South Gate Senior High School and South Gate Elementary School, have very recently come to the attention of state regulators and are currently under review due to soil contamination 105,000 times above the DHS minimum standard for certain toxins.

Further, the California Environmental Protection Agency (Cal/EPA) indicated prior to the release of this report that they are independently looking at as many as ten southern California schools for possible toxic contamination.

Not only do toxic school sites pose a very real health threat to children and the community, but the financial implications of such health threats and the probable clean-up costs could reach alarming levels. The committee recommends that:

All site approvals granted by the state where toxins were suspected at the time of approval must be reassessed, and if necessary, cleaned-up under the oversight of the DTSC or the California Environmental Protection Agency (CAL/EPA).

The California Department of Education (CDE) should immediately modify its internal site approval protocol so that state oversight activities ensure local compliance with the law. Districts with a history of failing to ensure school sites are toxin free must be subject to strict state oversight. These districts should be required to certify that all new school sites are safe by the DTSC prior to submission for CDE approval.

PUBLIC SCHOOL SITE APPROVAL: A SYSTEM IN CRISIS

There is no doubt that some California schools are built on hazardous toxic sites. The Joint Legislative Audit (JLAC) held an informational hearing on June 17, 1998, at which time the Director of the DTSC, Jesse Huff, explained how the LAUSD failed to adhere to state laws governing toxic safety at the JMS site.[1] Since the June 17, 1998 hearing, the committee has learned of at least eight additional LAUSD sites where schools were, or are in the process of being built on contaminated land. This unacceptable course of events apparently continues despite existing state laws and oversight procedures designed to prevent the building of schools on toxic land.

The reason why local districts choose hazardous sites for new schools was addressed in the committee's recent report: School Site Acquisition and Environmental Issues. This report concluded that at least one district, the LAUSD, chose toxic sites upon which to build new schools due in part to political expedience.

JEFFERSON MIDDLE SCHOOL: A case study

During the Joint Legislative Audit Committee's (JLAC) June 17, 1998, hearing, testimony focused on the Los Angeles Unified School District's (LAUSD) Jefferson Middle School (JMS), where buildings were erected on a seriously contaminated toxic site.

The following is a short chronology of the JMS project:

> The LAUSD began the process of purchasing the JMS site during the summer of 1986.[2] On January 9, 1989, the California Department of Education (CDE) approved the purchase of the JMS project for state funding[3] despite their knowledge that serious toxic concerns existed at the site.[4] The LAUSD conducted what Director of the DTSC, Jesse Huff, characterized as an "insufficient" toxic assessment and remediation effort at the site prior to construction without seeking the assistance of state environmental regulators.[5] At no time did the LAUSD seek outside assistance as required until forced to do so by the state.[6]

During construction of the new school in 1995, a DTSC scientist working on a federal Superfund site (Hard Chrome Products) located across the street from the JMS site noticed construction activities and made inquiries.[7] Subsequent to the DTSC coincidentally becoming aware of the

[1] School Site Acquisition and Environmental Issues, pg. 11-12.
[2] Office of Public School Construction Report, 7/20/98.
[3] Letter from Betty Hanson to LAUSD Board of Education, January 9, 1989.
[4] Letter From Rodger Friermuth to Betty Hanson, November 14, 1988.
[5] School Site Acquisition and Environmental Issues, JLAC Report July 1998, pg. 12.
[6] Ibid., pg., 12.
[7] Cal/EPA Preliminary Assessment, Hard Chrome Products, ID# V9299-252-01-0, November 22. 1985, pg.8.

JMS project, Cal/EPA intervened and demanded a thorough toxic assessment. This resulted in significant remediation actions that otherwise may never have taken place if the matter had been left in the hands of the LAUSD. Today, JMS is accepting its first group of students while soil remediation is underway and ground water remediation is being planned. The full cost of soil and groundwater remediation, the extent that those measures will be successful and exactly who will pay for these remediation efforts has yet to be determined.

The LAUSD appears to have failed in its responsibilities to ensure the JMS site was safe from toxic contamination by engaging in the following actions:

- The LAUSD produced its EIR before assessing, much less remediating, toxic hazards at the site;
- Despite the suspicion of toxic contamination, the LAUSD failed to seek the support of any state regulatory agency for assistance;
- In apparent conflict with existing law, the JMS is currently occupied prior to the completion of all mitigation efforts.

The LAUSD, by ignoring its responsibilities to act with due diligence, appears again to be suffering from chronic bureaucratic dysfunction. In fact, this was exactly the conclusion of a June 1997 organizational audit conducted by the international accounting firm, Arthur Anderson. Arthur Anderson concluded in their audit that:

> District productivity is hampered by political gamesmanship and the maneuverings of the Board, senior staff and their representatives. The lack of trust and respect among peers is evident through viewing their communications and looking at their actions towards each other. Congenial talk with limited real action and an abundance of protective memos seems to be the modus operandi. This environment is very inefficient and characterized by limited cross-functional collaboration between divisions. The Board, senior staff and divisions work most effectively together in crisis-type situations where they rally for the good of the District, temporarily putting aside their own priorities.[8]

It is from this managerial morass that JMS was apparently conceived and built. The details of how the LAUSD went about the planning and construction of the JMS project can be viewed in JLAC's July 1998 post-hearing report School Site and Acquisition and Environmental Issues.

The committee requested from the LAUSD a list of school sites where toxic issues have been or continue to be an issue.[9] To date the district has been unable to provide such a list.

In addition, it appears the LAUSD not only fails to appreciate its past mistakes but has also failed to learn from these mistakes. In a formal response to the committee's School Site and Acquisition and Environmental Issues report, the LAUSD's Chief Administrative Officer, David Koch wrote:

> Jefferson Middle School is safe for occupancy by students, faculty and the community. It poses no threat to the health and safety of individuals attending or visiting the site.

First and foremost, it should be remembered that the only reason Mr. Koch is able to make this claim today is because the state intervened and forced the district to conduct an adequate site

[8] LAUSD Organizational Review, Prepared by Arthur Anderson, June 12, 1997.
[9] Letter from Scott Wildman to Diane Doi, August 14, 1998.

assessment, and then initiate clean-up efforts prior to allowing students to attend the school. Had the DTSC scientist not stumbled upon JMS back in 1995, students would currently be exposed to levels of toxin that could very well be harmful. Additionally, there is no indication that Mr. Koch is able to make similar statements about the other eight identified district school sites currently occupied by, or being readied for, students and staff.

Mr. Koch continues in his response to the committee's report by stating:

> Using state-of-the-art technology, environmental experts removed a number of underground concrete and steel tanks from the site prior to the construction of the school, cleaned the soil, and performed hundreds of tests to ready the site for occupancy. While some pollutants remain in the groundwater some 150 feet below the surface, there is no pathway to the surface. Thus, these pollutants pose no health risks to either the students or the community. The only way the groundwater can impact the community is if its used for drinking water. However, the Regional Water Quality Control Board has determined that the submerged groundwater is not a health threat since it is <u>not</u> a source of drinking water and cannot impact the surrounding community.

This statement appears inaccurate. A recent letter from the California Regional Water Quality Control Board (CRWQCB)[10] to JLAC indicates that the soil at JMS is anything but clean. In addition, the very contaminants being targeted in the soil, volatile organic compounds (VOCs), migrate up through the soil and collect in buildings in a way that is similar to radon gas. In fact, the process used to extract VOCs is akin to a giant vacuum that attempts to extract the hazardous materials by sucking it to the surface for collection. While the AQMD has indicated that this process does not pose a threat to humans in the area, conducting such remediation efforts while the school is occupied directly contradicts regulations that require all remediation be completed before occupancy.

When asked, "What assurances exist that preclude VOCs from eventually collecting in school buildings to the detriment of human health?" DTSC Director, Jesse Huff, responded:

> The RWQCB is currently operating a soil vapor extraction (SVE) system for contamination occurring in the northeast part of the site. This system actively and aggressively pulls volatile organic chemical (VOCs) vapors from an extensive underground collection system into an activated charcoal collection/filtration system. As long as this system is operating, subsurface vapors should be pulled into the collection system and will not migrate to the surface or into buildings at the school. As described above, DTSC asked that LAUSD conduct air emissions testing of the SVE system. As long as the system is operated within its design constraints, no significant risks are expected to occur.[11]

Further, there are substantive issues at JMS that add to these health concerns. The groundwater referred to by Mr. Koch contains Chromium 6, a highly carcinogenic compound at levels 540 times higher than allowed by law.[12] Not only is it likely the LAUSD will be drawn into the clean-up efforts of the Superfund site across the street due to shared groundwater responsibilities, there is great concern that these highly polluted waters will eventually mingle with aquifers that are used by the community. Towards that end, the CRWQCB is currently

[10] Letter from CRWQB Executive Officer, Dennis Dickerson to Scott Wildman August 17, 1998.
[11] Letter from Jesse Huff to Scott Wildman, August 12, 1998.
[12] Memo from Cal/EPA Dr. Deborah Oudiz to Ken Chiang, October 9, 1996

monitoring area wells to ensure that such migratory contamination does not take place prior to complete remediation under the JMS site.[13]

Mr. Koch continues in his response to the committee's report by saying:

> The fenced-off vacant property across the street from the school is a former industrial site that has had some industrial pollution issues. It posses no safety risk for those who attend or visit the Jefferson Middle School. This industrial site has had pollutants removed from the top soil and has subsequently been turned into an asphalt lot. The asphalt locks the contaminants in place and prevents them from leaving the site.

When Mr. Koch makes the statement that the site across the street has "some industrial pollution issues" he is referring to a federally designated Superfund site that was deemed so dangerous to the community that the DTSC required the owner to:

- Remove the top soil;
- Take the soil to a special incinerator for burning;
- Pave-over what remained with asphalt;
- Erect a high cyclone fence around the entire property.

Mr. Koch concludes his remarks by saying:

> By aggressively and diligently making Jefferson Middle School safe for occupancy, the District has not only provided local residents with a new campus, but also contributed to a more environmentally sound community.

The LAUSD has exhibited a lackadaisical attitude concerning the critical health and safety issues by virtually ignoring these issues during the JMS site acquisition process. As LAUSD is currently poised to purchase more urban land for new schools, there is a strong indication that it is likely to repeat its errors.

WHY DID THE CDE APPROVE THE JMS PROJECT?

The CDE field representative who approved the nine identified toxic LAUSD school sites was Betty Hanson who worked for the CDE from 1988 - 1994. According to a November 14, 1988, letter from the LAUSD Facilities Manager of the School Planning Branch, Ms. Hanson was sent a number of documents as part of the JMS site review process that included the project's EIR. In this EIR it states:

> The results of the site reconnaissance and records search indicate the potential for adverse environmental impact as a result of historic and/or present activities. The proposed junior high school site is located in an area that is predominantly used as a furniture manufacturing facility. This business may handle hazardous materials related to the furniture finishing activities and reportedly has underground tanks for the storage of fuel oil. There is a potential for hazardous liquids to have impacted the subsurface of the site in the event of improper historic or present storage and handling practices.

[13] Ibid.

Yet just seven weeks later, Ms. Hanson signed the final CDE approval letter for the JMS site as she did for eight other LAUSD school sites where toxic concerns were known at the time of approval. JLAC has found no indication that any of the toxic LAUSD sites approved by Ms. Hanson, other than the JMS site, have been properly assessed or remediated.

Another cosigner to many of Ms. Hanson's site approval letters, including the JMS site approval letter, was then CDE Assistant Superintendent and Director of School Facilities Planning Division (SFPD), Duwayne Brooks. The committee wrote Mr. Brooks, who is now Director of the CDE's Child Nutrition and Food Distribution Division to inquire about the events surrounding the approval of JMS. The committee received two responses to its inquiry, one from Mr. Brooks and another from the current director of the SFPD, Ann Evans, who stated "I have enclosed [Mr. Brook's] response for your information and I concur with the information he presented."[14] Mr. Brooks has not worked for the SFPD for some time but the following words bear the full support of the current director of SFPD, Ms. Evans. In its response to the committee, the CDE/Brooks letter states:

> The information submitted to CDE by the district for Jefferson Junior High Site #1 stated that the geological study did not address soil contamination since access to the site could not be obtained from the owner. Denial of access by owners was not an uncommon situation. The information submitted by the district also stated that the current use of the property indicated that hazardous materials (most likely paints and varnishes) were used on the site, and potential problems depended on what precautions the owners had taken in handling those materials. The district stated that they had no knowledge of any contamination problems, and the existence of any problems could only be obtained through the testing once access to the site was obtained.

This response is cause for concern. If the CDE had insufficient information to certify the site free of toxins – amidst assertions that toxins were very likely a problem – then why did the CDE grant their approval to this project?

Because strong suspicions of serious hazards were not confirmed, the CDE refused to stop the acquisition process at Jefferson Middle School.

The CDE/ Brooks letter continues:

> My recent review of the Jefferson site package indicates that the procedures in place at the time were properly followed. While the information provided to the CDE by the district acknowledges the possibility of toxic materials on the proposed site, a condition of approval by the CDE was for the district to follow the investigation and mitigation requirements in existence at the time. The approval letter issued by the CDE directed the district <u>not</u> to move forward with a project involving the acquisition of the site unless the district completed the necessary investigation and mitigation requirements of Education Code Section 39002[15] and Public Resources Code Section 21151.2. Those were the requirements in place at the time.

It is unclear exactly how the JMS approval letter can be viewed as providing any form of specific direction to the LAUSD. The body of this approval letter states in its entirety:

[14] Letter from Ann Evans to Scott Wildman, August 13, 1998 .
[15] Now Ed. Code 17212.

> The State Department of Education approves the acquisition, for school purposes, by your district of the parcel of property described on the attachment.
>
> This approval is given under the provisions of Educational Code Section 39000, et. seq., and Title 5, Sections 14000, et. seq. Please note the local governing board's responsibilities under Education Code Section 39002 and Public Resources Code Section 21151.2.

The attachment referred to above includes some but not all the documents required by the CDE's School Site Selection and Approval Guide. References to toxic issues within these documents are limited to:

> SPF 4.0: An overall site review check sheet, that includes some 50 places to enter data, wherein the box labeled "Toxic" is checked. [16]
>
> A page entitled SITE DIAGRAM which states "See attached map" and the hand written statement: "Potential toxic from furniture factory resins etc."[17]
>
> SPF 4.02: A four-page document covering numerous site issues included one sentence on the last page, which reads "Soil could be contaminated."[18]

The characterization of this 1989 approval letter as having "directed the district not to move forward with a project involving the acquisition of the site unless the district completed the necessary investigation and mitigation requirements" is unconvincing as the JMS approval letter is a carbon copy of many other CDE approval letters reviewed by this committee – including those sites where no toxic concerns exist.[19] Further, there are two examples of CDE approval letters signed by Ms. Hanson that do make emphatic statements concerning toxic issues. On January 18, 1994, Ms Hanson signed an approval letter for a toxic site that stated:

> Approval is contingent upon the Phase II environmental assessment results that would insure the health and safety of the students and would be consistent with the cost standards of Office of Local Assistance.[20]

In this case, the CDE acknowledged that an environmental assessment had not been done, and further acknowledged that suspicions were strong enough to warrant the granting of only a conditional approval directly tied to this assessment. Another CDE approval letter of a toxic LAUSD site signed by Hanson states:

> Prior mitigation should be taken regarding removal of storage tanks, potential migration of contaminants from adjacent landfills, and shallow soil removal as described in the Phase II Environmental Assessment Report dated November 1990 and February 1991 by Exeltech.[21]

[16] CDE form: School Facilities Planning Division Sire Review.
[17] See Appendix.
[18] See Appendix.
[19] CDE Site Approval letters From Betty Hanson to LAUSD Board: September 27, 1988; January 9, 1998.
[20] Letter from Betty Hanson to LAUSD Board, January 18, 1994.
[21] Letter from Betty Hanson to LAUSD Board, July 28, 1992.

There seems to be no discernible criteria for any of the CDE site approval letters signed by Ms. Hanson. Three of the eight letters approving suspected toxic sites make some reference to the toxic issue but the remaining five approval letters do not. Regardless, for the CDE to grant site approval in the face of yet to be assessed toxic concerns appears to directly contradict those laws governing the approval process.

Finally, the CDE/Brooks letter concludes with the following:

> There are several factors used in considering potential sites for school purposes: Size, configuration, location (e.g., near students), surrounding area (away from airports, freeways, heavy industrial), cost, geological conditions, etc.
>
> Of primary concern to the CDE is the safety and educational appropriateness of the proposed site. Rarely is there an ideal site, and in large urban areas, totally clean sites are often very scarce. Each factor must be weighed carefully, and, taking all factors into consideration, a site with suspected, but mitigatable, hazards (such as toxic material) can be an acceptable site (and might even be the best site) for school purposes contingent on the hazard being mitigated prior to use as a school site.

The CDE appears to be grouping variables that are a legitimate part of a reasonable cost/benefit analysis along with toxic concerns. Based on clearly worded provisions of law, absence of toxic contamination should not be viewed as a variable, but as a required element in any land acquisition process. Further, the belief that no "ideal site" in urban settings for schools exists is the same argument promoted at the June 17, 1998, JLAC hearing by the LAUSD – an assertion that was discredited by subsequent testimony and the committee's post-hearing analysis.[22]

The committee concluded in our report that a willingness to act with due diligence is needed to ensure that new schools are built on clean sites – a willingness both the LAUSD and CDE seems to have lacked.

As discussed in School Site Acquisition and Environmental Issues, environmental mitigation procedures are not wholly predictable with regards to cost, effectiveness and timeliness. In addition, the extent and therefore the cost of remediating a hazardous site is often very difficult to assess. Since initial toxic assessment and the remediation process itself are both problematic, it is troubling that the state might consider a highly toxic site as the "best" of numerous alternatives.

The CDE/ Brooks letter concludes its remarks with the following:

> Given the information at the time, the review that was completed, and the directions given to the district to follow the appropriate Education Code Section and Public Resources Code Section, I believe that due diligence was exercised by the CDE in this situation.[23]

What is troubling is not so much the CDE's denial of any lack of diligence but the apparent indication that future efforts will not be influenced by past inadequacies. As discussed above, there is no evidence of any explicit direction provided to the LAUSD by the CDE concerning

[22] School Site Acquisition and Environmental Issues, JLAC Report July 1998, pg. 8-9.
[23] Letter from Duwayne Brooks to Scott Wildman, August 14, 1998.

toxic remediation at JMS. Again, the JMS authorization letter mirrors many of the other CDE approval letters reviewed by this committee where toxins were not evident. For the CDE to present the JMS site approval letter as a tailor-made document that specifically addresses the unique approval needs of this site is unacceptable.

There is every indication that inadequate CDE practices and procedures may have resulted in other toxic sites being acquired for schools.

CONCLUSIONS

1. There can be no doubt that when a school is built on a toxic site, it is first and foremost the result of local school district inattention.

2. The fact that toxic sites are currently approved by the state for school construction illustrates a serious flaw in the way site approval is currently being conducted.

3. It is reasonable to question whether the CDE's site approval process is effective.

4. Because strong suspicions of serious hazards were not confirmed, the CDE refused to stop the acquisition process at Jefferson Middle School.

5. The committee concluded in our report that a willingness to act with due diligence is needed to ensure that new schools are built on clean sites – a willingness both the LAUSD and CDE seems to lack.

6. There is every indication that the inadequate CDE practices and procedures may have resulted in other toxic sites being acquired for schools.

RECOMMENDATIONS

- All site approvals granted by the state where toxins were suspected at the time must be reviewed and if necessary cleaned-up under the direction of the DTSC.

- The state must immediately reconfigure its internal site approval protocol so that state oversight activities ensure local compliance with the law.

Districts with a history of failing to ensure school sites are toxic free must be subject to strict state oversight. It must be required of these districts that all new school sites be approved by the DTSC prior to submission for state approval.

Agency Responses to Audit Committee Reports Related to Education

CALIFORNIA DEPARTMENT OF EDUCATION

The JLAC wishes to commend the California Department of Education (CDE) for its response to the committee's findings. As evidenced by the following documents, the CDE's School Facility Planning Division first responded by convening an Interagency Working Group on School Site Selection and Environmental Concerns. This group made the following recommendations that are on the fast-track for implementation:

- Enhance and standardize internal training procedures for CDE field representatives with an emphasis on toxic contamination and other environmental issues;
- Additional staff position – Environmental Specialist;
- Establishing a protocol that strengthens coordination with lead environmental regulatory agencies;
- Require a Phase I assessment for every prospective site identified as "preferred" by the local district;
- Require a Phase I assessment for alternative sites that are commercially zoned;
- Phase I assessments must be consistent with the standards and procedures of the American Society for Testing and Materials and conducted by an appropriately licensed professional;
- All Phase I assessments that identify an actual or potential hazards must be followed by a Phase II or other Department of Toxic Substance Control sanctioned assessment;
- Assessment access to all sites is a prerequisite for CDE approval;
- All Phase II information will be formally presented to the Office of Public School Construction to facilitate informed funding decisions;

LOS ANGELES UNIFIED SCHOOL DISTRICT

The LAUSD recently proposed transferring the California Environmental Quality Act officer's responsibilities away from the Real Estate and Asset Management Branch to eliminate any question of conflict between business and safety issues. The District has also convened an environmental Safety Team comprised of two public relations consultants, an environmental specialist and the lawyer charged with defending the District against Responsible Party suits.

TO: BOARD OF EDUCATION OF THE CITY OF LOS ANGELES

FROM: SUPERINTENDENT OF SCHOOLS

VIA: FACILITIES COMMITTEE

Facilities Services Division Communication No. _
to the Board of Education on November __, 1998

SUBJECT: Revisions in School Site Assessment and Construction Procedures

PROPOSAL

It is proposed that the Board of Education authorize changes in the policies relating to planned school sites in accordance with the provisions of this report.

BACKGROUND

In order to re-confirm that Jefferson Middle School was safe for students and staff, the Superintendent and Chief Administrative Officer (CAO) implemented a number of actions to strengthen the District's environmental assessment procedures. These actions included requesting that the Department of Toxic Substances Control (DTSC) direct the environmental re-evaluation process and certify the results at the site, and that a group of individuals work with regulatory agencies, community members, District officials and government officials. This group of individuals has become known as the School Safety Team (Safety Team), a multi-disciplinary entity consisting of environmental specialists, environmental counsel, District staff and a governmental affairs specialist.

The CAO is proposing that the Safety Team operate as a subset of a larger School Safety and Construction Task Force (Task Force), which will serve as the initial review body for any existing school for which DTSC has identified an issue, and all proposed school projects, including primary centers. To be chaired by the CAO, the Task Force will be comprised of the Safety Team and representatives from the offices of the General Council, Facilities Services Division, Governmental Relations and Public Affairs, Policy Research and Development and the Proposition BB Coordinator.

While the Task Force will be the overarching body responsible for ensuring the safe siting and development of schools, it may refer any existing school or proposed school site to the Safety Team for its evaluation and recommendation.

Upon referral by the Task Force, the School Safety Team will conduct a review of the information presented by the Task Force in order to determine, for example, if the project merits oversight by the DTSC, requires a renewed understanding of time frames, costs and site feasibility, or suggests reforms are needed in either District, local or state guidelines. It is important for Board Members to be aware that DTSC review and when appropriate, certification, will be requested for only those sites whose former occupants were commercial or industrial businesses.

The Safety Team’s review will include an evaluation of existing community, media and government outreach efforts to ascertain whether any changes in approach are necessary. The focus of these efforts will be to make sure that local community members and elected officials are fully involved when land formerly used for commercial or industrial purposes is being considered as a potential new school.

In re-evaluating Jefferson Middle School, a need was identified to strengthen the District's internal procedures for ensuring that imported fill brought to a school construction site is clean. While district specifications require that “imported material shall be clean,” they do not specify who is to make this determination and what environmental standards are to be followed to reach this conclusion. Further, the specifications state that the “Soils Engineer, or District Inspector, will approve imported fill materials and their source prior to delivery to the jobsite.” One individual should perform this task once the Environmental Health and Safety Branch has developed imported fill standards in conjunction with the DTSC.

BUDGET IMPLICATIONSDESEGREGATION IMPACTRECOMMENDATIONS

IT IS RECOMMENDED THAT:

1. The Board of Education authorizes the Chief Administrative Officer to create a School Safety and Construction Task Force to review all proposed school sites as well as other identified sites to ensure that all health and safety issues are evaluated and resolved consistent with regulatory requirements and District policies.

2. The Board of Education authorizes the Chief Administrative Officer to create and fund a unit within the Task Force for assessing existing and proposed school sites whose former occupants were commercial or industrial businesses. Known as the School Safety Team, this multi-disciplinary unit will be assigned, at the discretion of the Task Force, to evaluate any proposed or existing school site and make recommendations to the Task Force. The Safety Team will work with the DTSC to obtain oversight and when appropriate, certification. They will also help strengthen our community and government outreach efforts and recommend changes to District procedures. While initially consisting of both internal staff and outside consultants, the District will take all steps necessary to transition the Safety Team into a District entity.

3. The Board of Education authorizes the Chief Administrative Officer, in conjunction with the Safety Team, to negotiate a Memorandum of Understanding (MOU) with the DTSC, which will include designating the agency as the lead regulatory body under state law responsible for oversight, interagency coordination, and the issuance of permits. Until such time as a general MOU can be reached between the DTSC and the District, the District will negotiate interim agreements on a site-by-site basis.

4. The Chief Financial Officer be authorized to pay the DTSC appropriate fees and/or reimbursement of costs agreed to in the MOU and clean-up agreements.

5. The School Safety Team be authorized to work with the Deputy Superintendent of Government Relations and Public Affairs to seek any necessary legislation to strengthen all school districts' commitment to the site selection, construction and operation of schools, including, but not limited to, setting new laws on the sale, source and nature of imported fill.

6. The Chief Administrative Officer be authorized to ask the Environmental Health and Safety Branch to develop, and the Facilities Services Division to implement, internal standards and procedures within the District for imported dirt brought to school construction sites. These standards will be established in conjunction with the DTSC.

7. The School Safety Team's environmental counsel be authorized to work with the General Counsel's Office to perform a full legal analysis of environmental conditions of former industrial properties prior to acquisition to better ascertain the anticipated clean up costs and to establish a legal basis for recovering unanticipated costs.

Respectfully submitted,

Ruben Zacarias
Superintendent of Schools

PREPARED BY:

Beth Louargand
General Manager, Facilities Services Division

PRESENTED BY:

David W. Koch
Chief Administrative Officer

Preliminary Report by the Joint Legislative Audit Committee, Chairman, Assemblyman Scott Wildman Regarding State Allocation Board Funding of the Los Angeles Unified School District's Belmont Learning Complex

July 22, 1998

EXECUTIVE SUMMARY

Summary Statement: It is inconsistent with state law to release state funds for the Belmont Learning Complex until the proposed school construction project is put out to bid pursuant to Public Contract Code 20111 et. seq. As plans and specifications have now been submitted, State Allocation Board funding should be predicated on competitive bidding in the selection of a general contractor.

FINDINGS:

1. State funding of the Belmont Learning Complex is in violation of the Leroy F. Greene State School Building Lease-Purchase Law of 1976, the law under which Los Angeles Unified School District (LAUSD) has applied for reimbursement, because the district did not select the lowest responsible bidder for school construction.
2. The LAUSD justified circumventing the competitive bidding process in 1994 by relying on the terms of anticipated legislation, which remains inoperative, even though it was subsequently enacted in 1996.
3. Even if AB 481 was operative, the project violates California Education Code, Section 17060 because it did not use a "bidding process as approved by the State Allocation Board" for the "portion . . . funded by the state." No formal selection process was used to choose a general contractor. Instead, the position was simply awarded to a partner of the developer's team.
4. Even if AB 481 had been operative, it is likely not applicable to the current project, as the current project is not a joint venture project.
5. The use of public bond money for joint ventures is likely in violation of the California State Constitution.
6. The Superior Court of California ruled that the LAUSD could not use state funds for Belmont Learning Complex construction costs using the Request for Qualifications (RFQ) and Request for Proposals (RFP) developer selection process it employed.
7. In its current state, construction of the Belmont Learning Complex is in direct conflict with The Field Act.

8. No developer selection has occurred for the current project. The current developer and development team was chosen based upon a distinctly different project, which no longer exists.
9. Developer selection for the original project was based upon non-school elements. Hence, the criteria for selection was wholly irrelevant.
10. The developer selection process was deeply flawed and plagued by at least two conflicts of interest (see details in report).
11. The selection committee and the selection criteria were inadequate (detailed in report).
12. The winning developer inappropriately benefited from a $20 million advantage due to a "computation error."
13. Proposals by which the developer was chosen were unrealistic and undeliverable.
14. The Belmont Learning Complex is a high school construction project, yet it has a price tag of a development project with unjustified development fees of $5.5 million and numerous unreasonable financial incentives.
15. LAUSD is not in control of the project.

Partnerships Between Public Schools and Private Developers

December 1, 1998

EXECUTIVE SUMMARY

In recent years, school districts throughout California have faced a scarcity of the resources necessary to effectively deliver quality educational programs to the students that they serve. In order to generate discretionary revenues and defray locally funded school construction costs, some school districts have engaged in "joint venture" partnerships with the private sector to develop school district-owned properties.

The Joint Legislative Audit Committee (JLAC) staff examined and evaluated a number of joint venture development projects for the purpose of gauging both the benefits and the costs of utilizing this innovative school construction procedure. In each case, the school district either directly leased public property to development companies or attempted to establish mixed-use developments on public school land by sharing initial costs and agreeing to share potential profits with the developers.

Although development projects of this variety are not widely utilized by California school districts, at least two districts – the Brea Olinda Unified School District and the Los Angeles Unified School District (LAUSD) -- have attempted these types of development projects. Both districts relied on outside consultants and attorneys to advise and direct their joint venture partnership efforts. While the LAUSD has attempted a number of joint venture projects as a means of generating revenues for the district over the course of approximately twelve years, it has only completed one such project to date.

The JLAC examined seven of these public/private joint venture projects along with the activities of the consultants, attorneys, and district staff who promoted, planned, and attempted to execute them.

FINDINGS:

The JLAC found that in all seven case studies, school districts encountered significant problems and complications that appear to have far outweighed the benefits that the projects' proponents promised to the school districts. We found that:

- Districts rarely realized any return on their investment and even less frequently realized any additional revenues from the projects.

- Districts were left with new financial and legal obligations requiring increased expenditures and significant staff attention.

- One school district, the LAUSD, created an entire department, the Office of Planning and Development (OPD), just to address the complexities of joint venture arrangements and other "alternative" development projects. Salaries alone for the department exceeded a half million dollars annually. (The OPD was recently restructured).

- In addition to the District's regular expenditures, the LAUSD spent millions of additional public dollars on outside consultants and attorneys. While the reasons for these expenditures are often unclear and poorly documented, the District contends that the OPD's lack of expertise in development projects required these expenditures.

- Many of the outside consultants and attorneys retained by the districts were plagued by conflicts of interest, which may violate existing law, and which clearly cast a shadow of suspicion on many of the districts' decisions.

- In one such LAUSD joint venture effort, the Ambassador Hotel Project, twelve years of time and energy and millions of public dollars have been expended, with the financial and legal controversies that developed yet to be resolved.

- Funds that were allocated for priority instructional programs and facility improvements were instead spent on speculative joint venture projects. For example, the LAUSD redirected over $30 million allotted by the State Allocation Board (SAB) for air conditioning of existing district schools toward a risky joint venture land purchase (Belmont Learning Complex). The district also risked $50 million from the district's worker's compensation fund and encumbered several of its real properties as collateral in pursuit of the Ambassador Hotel project.

- Both the Brea Olinda Unified School District and LAUSD risked the integrity of their general funds as collateral for Certificates of Participation (COPs) that were issued for speculative projects.

- In a probable attempt to cover mistakes and/or potential improprieties, one school district either destroyed, disposed of or lost public documents that were crucial for monitoring the progress of these projects and for analyzing the viability of joint venture strategies.

- Due in large part to an inordinate focus on joint ventures, one of the districts under study, the LAUSD, has failed to build a single complete full-service high school since 1971. It has built only one middle school since that date, Jefferson Middle School, a school which itself is now mired in controversy (see JLAC Report, Toxic School Sites: Weaknesses in the Site Acquisition Process, August 1998).

- In the only completed LAUSD joint venture, the Grand Avenue Garage, a project called "…the best agreement we have on anything…" by LAUSD former OPD head, the district has faced difficulties in collecting the guaranteed lease payments and may end up in litigation with the defaulting developer. Moreover, the building, a parking garage on 17th and Grand Avenue in downtown Los Angeles is currently being assessed for potential structural deficiencies.

- It appears that LAUSD staff, consultants and counsel have engaged in a pattern of misrepresentation and deception in order to pursue joint ventures. In one instance, evidence suggests that the district exaggerated the extent of earthquake damage to its Business Services Center (BSC) in order to justify moving administrative functions into expensive leased space in the IBM Towers and to facilitate redevelopment of the original BSC site.

- For unexplained or unjustified reasons district staff and consultants, particularly those representing the LAUSD, have been systematically circumventing the traditional competitive bidding process and have subsequently attempted to change state law to make such activities permissible.

- The inordinate amount of attention given to joint venture projects has clearly taken time, resources, and focus away from the educational needs of students in the LAUSD.

INTRODUCTION

From the mid-1980s to date, the Los Angeles Unified School District (LAUSD) has increasingly pursued highly speculative, profit generating development projects, using the public purse and the public trust. Its activities have largely entailed purchasing land or using district-owned land for private interest uses such as office space, housing, parking and retail development. Some of these land uses have included a school as part of the overall development scheme, while others have not.

Many critics have opposed the school district's focus on non-educational activities and others have called the joint venture plans absurd, questioning both the appropriateness and feasibility of mixing school sites with business enterprises. For example, one local developer, Wayne Ratkovich, President of the Ratkovich Company, wrote in an April 2, 1990 letter to Barbara Res, Executive Vice President for the Trump Organization regarding the district's development plans for the Ambassador Hotel site:

> *"I see [no] rational argument to suggest that a high school … could be part of an urban, mixed-use development. There is no compatibility between the school and the non-school uses, and one could expect severe and fatal marketing limitations on the non-school uses… Given the dire needs of our educational institutions and the generally oversupplied character of our real estate markets, it seems to be a good time for LAUSD to concentrate its resources on the education process, not real estate development."*

It has become clear that public funds, intended for the purpose of educating California's children and constructing schools, are being gambled on high-risk joint venture projects - projects which have consistently failed to produce the benefits promised to the school districts involved.

BACKGROUND

One of the first major school district joint venture projects in California involved the Brea Olinda Unified School District and the City of Brea in Orange County.

During the late 1970s, under the leadership of Wayne Wedin, the Brea City Manager and Director of Redevelopment, the city embarked on an aggressive redevelopment effort. One of the designated redevelopment areas was the Brea Olinda High School site. A local developer, Robert Lowe, was interested in the project.

Wedin and Lowe approached the school district with plans to develop the area. Lowe proposed developing the existing high school site into a commercial marketplace and agreed to help the district relocate the existing school using an unconventional and complicated development

strategy. Under the terms of the deal, Lowe would purchase a portion of the existing school site, lease another portion from the district, and develop the property commercially. He would then share a portion of the profits generated from the commercial development with the school district. The school district's share would "pass through" the local Community Redevelopment Agency (CRA).

Despite a series of obstacles, the district was eventually able to complete a new high school on a different site in 1989. Unfortunately, the project faced considerable cost overruns, a significant reduction in the originally projected scope of the school facility, risk to the district's general fund and a great deal of local controversy.

Nonetheless, the project was heralded as a success, and Wedin gained a reputation as a creative and effective asset management consultant. In fact, he was called the *"father of asset management"* by former LAUSD consultant and architect Rush Hill. Over the past twelve years, Wedin has been paid over a million dollars in consulting fees by the LAUSD in pursuit of experimental public/private development projects.

In addition to working on the Brea Olinda High School project, Wedin has performed consulting work for other school districts as well. On several occasions, he proposed that school districts consider joint venture projects similar to the Brea-Olinda project. This was the case at the Modesto City School District (MCSD), where Deborah Bailey, the MCSD's Director of Planning and Research brought Wedin in to help negotiate the district's pass-through agreements with the local redevelopment agency. Shortly thereafter, MCSD became involved in a multi-use project with Stanislaus County and the City of Modesto.

The school district eventually withdrew from the project due to the concerns articulated by Superintendent James Enochs, who told JLAC staff,

> *"There is no way I can put this district in that kind of risk. There was not sufficient evidence that redevelopment would generate the kind of money that we needed to participate. It was so convoluted, and I couldn't, in good conscience, put us into that situation using our general fund money to cover our losses. They're [joint ventures] all a mess."*

The situation was convoluted. Bailey explained:

> *"Initially, the expectation was to build a joint education and administrative building for three educational agencies. Then the community college bailed. Then it was the county, Modesto City Schools and the City of Modesto . . . Wedin expanded the scope to include retail components. The developer also went through changes in partnerships."*

But while Modesto was unwilling to risk public dollars on such ventures, the LAUSD plunged into a number of joint venture projects despite the risks. *"It doesn't surprise me. LAUSD always thinks Sacramento will bail them out,"* Enochs said.

During one telephone interview, Dominic Shambra, Director of the LAUSD Office of Planning and Development (OPD), confirmed the district's attitude toward risk when he told JLAC staff,

> "… my job was to take risks."

Shambra, in consultation with Wayne Wedin and O'Melveny & Myers attorney David Cartwright, repeatedly risked public money in pursuit of speculative public/private joint ventures. Most of the projects failed, though proponents such as Cartwright, contend that LAUSD's first joint venture development project, the Grand Avenue Garage, was at least nominally successful. Other observers, including David Tokofsky, a member of the LAUSD Board of Education, have called even the Grand Avenue Garage Project a failure.

The 17th and Grand Avenue Peripheral Parking Project (Grand Avenue Garage), involved a parcel of district-owned property in downtown Los Angeles that was leased to Maguire Thomas Partners to build a parking facility, child care center, office space and a retail center. The project was intended to generate *"…substantial revenue from office space rentals…"* for the school district and to provide additional LAUSD office and classroom space, according to a District press release.[24]

Eventually, however, every feature other than the parking garage was eliminated from the project. The garage was completed at the end of 1991 and has only generated a total of $736,623 in revenues for the district since its inception, considerably less than was originally projected.

Meanwhile, the district faces potential litigation, as the developer has partially defaulted on two years of lease payments to the district, and questions about the structural integrity of the building have recently surfaced.

The Grand Avenue Garage may have been the initial impetus for the creation of a new department at the LAUSD. During the project's early stages, Shambra and Wedin became acquainted, and Rush Hill, the architect who introduced Wedin to the LAUSD was *"shoved to the side,"* Hill told the JLAC. At that time, *"By [Byron Kimball, former LAUSD Facilities Director] introduced us to Dom [Shambra] because he was going to coordinate [the ventures]. Dom and Wayne were like two peas in a pod and we [Rush Hill]were knocked out by Dom,"* added Hill.

It appears that Wedin advised Shambra to initiate a district reorganization plan that would create an entire department under Shambra's direction - the OPD - a department that was dedicated to joint ventures and alternative financing mechanisms.[25]

Wedin explained in an April 20, 1987 memo to Shambra:

> *"There has to be greater emphasis upon how the District organization will be changed by a large construction effort and how the real estate acquisition process can be conducted more positively than in the past … Obviously, more attention will have to be paid to the integration of all District operations into a smoothly running property acquisition and development effort."*

Three years later, a new department was born, first known as the Bond and Asset Management Department and later called the Office of Planning and Development (OPD). Despite the fact that Shambra had no relevant background or training, the department was placed under his direction. (Shambra admittedly had no experience with real estate transactions, law, urban planning, land use planning or demographics. His training was in elementary education and

[24] LAUSD press release, Sept. 20, 1990
[25] April 20, 1987 memo from Wedin to Shambra

elementary school administration).[26] Salaries at OPD exceeded a half million dollars each year, according to LAUSD's Chief Administrative Officer David Koch.[27]
Moreover, Shambra kept no thorough departmental records. When asked approximately how much revenue alternative source financing arrangements had generated for the district under his tenure, Shambra said under oath, *"I couldn't tell you. I don't know. Once I do the agreements, the money flows, and I don't really pay much attention to it."* He further stated that he had never seen any report or analysis.[28]

Shambra and Wedin initiated at least four other joint venture projects during their tenure at the LAUSD – the Van Nuys Medical Magnet, the Brentwood Re-Use Project (a science magnet school), the Business Services Center/Cornfield project and the Ambassador Hotel High School Project -- that have failed to materialize to date. The District has, in fact, been working on the Ambassador Project since 1986 and has been embroiled in litigation over the land acquisition phase of the project for more than eight years. The outcome is still pending. And though the district may eventually obtain the property, it will likely have to pay all legal fees plus damages to the current owners, Ambassador Associates.

On the heels of this litany of failures, the LAUSD began a sixth, complex joint venture project, the Belmont Learning Complex (BLC), which is now being built as a school only project, while many of its initially proposed additional components – including retail, low-income housing and a joint use city/school district gymnasium -- remain uncertain.

Although the BLC project has been criticized by observers across the board – including developers, two independent oversight committees, LAUSD Board of Education members, community members and law makers – LAUSD staff and consultants have blindly disregarded these concerns and continued to guide the project toward completion even after the project's main proponent, Dominic Shambra, retired in early 1998.

Clearly, Shambra's supervisors never intervened to provide direct oversight or even to seriously question the BLC project. In part, this may be due to Shambra's aggressive approach of *"…browbeating people out of supervising him,"* according to former OPD employee Porter Hall. Affirming this contention, Shambra himself told a JLAC investigator of his demeanor in dealing with his supervisors,

> *"… I kicked his [former Superintendent Sid Thompson] ass in closed sessions. He was crapping in his pants. The new one [current Superintendent Ruben Zacarias] is crapping in his pants too."*[29]

Today, consistent with its aversion to providing direct control over its projects and the OPD staff, the district has already agreed to pay to the BLC development team, Temple Beaudry Partners (TBP), a number of exorbitant and unjustified fees normally associated only with complex development projects despite the elimination of many of the original project's components.

Additionally, the BLC Project has been plagued with unaccounted for costs and a lack of quantifiable work product from the numerous consultants and attorneys who have been retained for the project. Much like the other LAUSD joint venture projects that were reviewed by

[26] Dom Shambra testimony, February 20, 1997, Ambassador Associates vs. LAUSD
[27] JLAC telephone interview with David Koch, October 14, 1998
[28] February 20, 1997 Shambra deposition
[29] JLAC telephone interview with Shambra, August 18, 1998

the JLAC, contract employees were regularly retained at a significant cost to the district for the BLC Project and worked on assignments that were ill-defined and which produced few if any measurable results and no identifiable benefits for the district.

JLAC RECOMMENDATIONS:

The JLAC recommends the following:

1. Stricter guidelines and oversight in order to protect public funds from being squandered on high-risk ventures. The Office of Public School Construction (OPSC) should strengthen procedures and regulations to restrict local districts from entering into high-risk ventures using public funds.

2. Hold school districts accountable to State Law by withholding State funding from school districts that do not follow State guidelines.

3. Enforce State Laws that prohibit public officials, including consultants, from participating in public projects where conflicts of interest are present.

4. Require public approval for high-risk projects, such as public/private joint ventures, that utilize public money.

5. Eliminate the apparent abuses related to the eminent domain process.

6. Require complete project approval from the state prior to allocating any public funds.

7. Investigate the destruction of pubic documents by officials of the LAUSD.

8. Institute effective “Whistle Blower” protections.

9. Investigate staff, outside consultants and attorneys for potential conflicts of interest, fraud and obstruction of justice within the LAUSD.

CONCLUSION

The case studies contained in this report speak for themselves. The joint ventures between public school districts and private developers, that were examined by the Joint Legislative Audit Committee staff, consistently failed to achieve the goals and the objectives that they promised. More disturbing than the failures, however, is that these strategies and experiments, without comprehensive guidelines and oversight, allowed some private interests to methodically take advantage of administrative weaknesses within public school jurisdictions for their own financial gain. Moreover, Los Angeles Unified School District staff and consultants appear to have formed renegade operations that were unsupervised and unaccountable. They systematically engaged in a pattern of irresponsible, and arguably illegal behavior, and they appear to have consistently misrepresented basic facts in order to gamble public funds on highly speculative projects. These abuses have misdirected and squandered millions of taxpayer dollars that were intended to support instructional programs for our children and rebuild our public education infrastructure.

Appendix A: Timeline

1976	Brea CRA Designates High School Site for Redevelopment
1981	Wedin, then Brea City Manager, begins consulting the Brea Olinda School District.
1986	CRS Sirrine begins managing construction for the new Brea Olinda High School Project
	Rush Hill brings Wedin to the LAUSD
	Hill and Wedin begin lobbying efforts on asset management/school construction issues
	Hill and Wedin propose Grand Avenue Garage
	Ambassador Hotel site identified for possible joint venture
1987	Wedin participates in Project COACH, a seminar, with CRS Sirrine
1988	Wedin runs for Brea City Council. He wins the seat.
	LAUSD/Wedin/Hill issue RFQ for Grand Ave. Garage (Maguire Thomas selected)
1989	Wilshire Center Partners purchases Ambassador Hotel.
1990	Wedin is investigated for Conflict of Interest by the FPPC. He is later tried for criminal charges and acquitted.
	An elementary school is proposed on the Van Nuys Agricultural site.
	LAUSD offers $73 million for Ambassador site and upon offer's rejection, District begins condemnation proceedings.
1991	Shambra proposes a joint venture on Van Nuys Agricultural site instead of an elementary school
	Shambra and Wedin issue RFQs on the Business Services Center Site and the Cornfield. Neither comes to fruition
	Grand Avenue Garage completed
1992	LAUSD and owners of the Ambassador agree to a new purchase price
1993	LAUSD enters into negotiations with Ralph's Grocery Company for a Joint Venture on its Brentwood site.

	LAUSD enters into exclusive negotiations with Pacific Alliance Realty for Van Nuys Medical Magnet Joint Venture.
	LAUSD backs out of Ambassador purchase deal.
	LAUSD purchases Temple Beaudry and Shimizu sites for Belmont Learning Complex
1994	Northridge Earthquake, Business Services Center damage assessment. Despite minor damage, LAUSD declares an emergency.
	Shimizu Grant Deed recorded. Belmont RFQ issued.
1995	Wedin prepares a new RFQ for Van Nuys Medical Magnet Joint Venture
	Caruso Holding Affiliates and LAUSD begin joint venture discussions on Brentwood site.
	LAUSD moves BSC staff into the IBM Towers in Downtown LA to vacate the Business Services Center for development
	TBP/Kajima selected for Belmont Learning Complex Joint Venture
1997	Construction begins on Belmont Learning Complex
1998	SAB rejects state funding for BLC

CONSTRUCTION MANAGEMENT
Post Hearing Briefing Paper
June 15, 1998

On May 20, 1998, an informational hearing was convened in Sacramento by the Joint Legislative Audit Committee (JLAC) on the subject of Construction Management (CM) and the viability of the use of this model in the building of California's public schools.

The testimony of over a dozen expert witnesses was heard, focusing on the basic principles of CM implementation as well as issues related to certification, oversight, and the structure of CM lead projects. The testimony suggested that a lack of management resources and owner sophistication may be driving the CM debate. And though CM fulfills a need that plagues districts which lack adequate facilities staffing, little conclusive evidence was presented at the hearing to affirm the claims of some CM advocates that school projects could be executed faster and at a lower cost than traditional methods of project delivery. Similarly, no compelling evidence emerged to substantiate claims that traditional approaches, such as the use of General Contractors (GC) and Architects in design-bid-build scenarios, provide less flexibility than that afforded to local districts through CM.

Representatives of several school districts that have utilized CM as a method of project delivery lauded the effectiveness of CM as a delivery system based on its convenience and the success realized through this model in their respective districts.

Nevertheless, the hearing strongly suggested that the drive to alter California's current school construction policies are not solely based on a compelling public interest in innovation, efficiency, and effective public/private partnerships. It appears likely that Construction Management is increasingly being considered and implemented in school projects as a means of addressing the current staffing deficiencies and limited resources of local districts.

Finally, the hearing clearly exposed a pressing need to clarify and address the authority available to state agencies to monitor and advise local school districts on a wide range of school construction issues.

BACKGROUND

While many fundamental aspects of public school construction are essentially the same today as they were thirty years ago, there is at least one dramatic difference. The internal facilities and planning divisions of local school districts have experienced a significant decline in their overall capacities to manage complex construction projects both in terms of staff size and expertise.[30] While this observation is somewhat empirical, testimony presented at the JLAC hearing, combined with the following statistics, paint a compelling picture:

- 60% of California's school facilities are over 30 years old[31];
- California public school enrollment has increased 36% in the past 20 years[32];

[30] Stephanie Gonos, Director, Coalition for Adequate School Housing. Testimony at May 20, 1998 hearing.
[31] Average Age of School Buildings: California Department of Education, Kurt Yeager.
[32] "Enrollment in California Public Schools: 1950 through 1997" CBED data collection, Educational Demographics Unit.

- State funding of school construction projects has remained, for the past 30 years, relatively flat up until the late 1980s and is currently poised for a dramatic increase.[33]

A pattern of relatively flat funding of public education is evident during a time of increased enrollment and aging buildings. The enactment of Proposition 13 provides another relevant benchmark in understanding the fundamental shift in the funding of local school districts. During this period of diminishing public school resources and flat construction spending, it is reasonable to conclude that local districts pursued cost saving strategies which included cutting back on their facilities and planning departments. The result appears to have been a substantial reduction in facilities and planning staff and expertise over the past twenty years.

This reduction in planning and facilities staff was acceptable as long as school boards were able to postpone their building needs. But the aging and declining conditions of facilities, occurring during the same period that the population of school children was increasing by 38%, has created a critical situation that cannot continue to be ignored. In hindsight, it is clear that the state's failure to address its building needs, as they arose, has in many ways contributed to the present day scramble to build and modernize.

In the past, the standard model for school construction involved a system of checks and balances created by the following participants: a) district-owner; b) architect; c) inspector; and d) GC. The architect, inspector and GC are individually licensed by the state for the performance of their specific responsibilities. In addition, each of these project participants are under specific contract with the district-owner. Further, each player has a responsibility to hold the other players accountable. The architect, as the district-owner's agent, ensures the GC is not attempting to push through overpriced or unnecessary change orders. The inspector, also the district-owner's agent, ensures that subcontractors are building to specification. The GC is legally liable for ensuring that subcontractors perform their duties in accordance with specifications and the direction of the inspector.

Within the last decade, CM has emerged in two distinct forms, as either a single prime CM (sometimes referred to as an agency CM) or multiple prime CM. The main difference between the two forms of CM is whether or not the GC remains a part of the construction process. With a single prime CM, the standard model stays intact with the CM being added along with the GC, architect and inspector. With a multiple prime CM, however, the GC is eliminated. Instead of the GC hiring the project's subcontractors, it is now the district-owner who acts as the GC and contracts directly with the individual contractors now referred to as trade contractors. If something goes wrong on the project when using a multiple prime CM, that problem becomes the financial liability of the district-owner as there is no GC to hold responsible. As a result, it is somewhat misleading to say that a multi prime CM "replaces" the GC because the CM is only an agency advisor and not legally responsible for the performance of the trade contractors. It should come as no surprise that the dramatic increase in public school construction spending in the early 1990s coincides with the time that many districts began choosing Construction Management as their preferred vehicle for construction delivery. The reason for this move towards CM was the allure this system provided in offering a range of management services that historically were provided in-house by local districts. Further, the use of a CM was allowed by the provisions of a 1989 State Allocation Board (SAB) policy revision followed by a related 1994 modification allowing for the use of CM on SAB funded projects.

[33] Bond Offerings: SAB 1997 Annual Report, Table #11

It is therefore arguable that the initial desire by school districts to use CM was driven in part by the desire to have those management services that had historically been paid for by the local general fund, be financed instead by the SAB. Such an observation relies on the fact that most districts have increasingly found themselves between a rock and a hard place with growing school enrollment, aging buildings and a reduced planning and development staff, all at the same time as class size reduction efforts for grades K-3 are in full swing.

While an analysis of how and why many districts apparently neglected their facility needs may be instructive, the focus of this inquiry is future policy implementation and the very critical needs of California students and communities for new and restored school facilities.

SUMMARY

The proverbial cart, in the case of Construction Management as a viable delivery system for school construction, may be coming before the horse - in that the legislature, the SAB and the Office of Public School Construction are so embroiled in the pros and cons of CM that they may have lost sight of why CM became an issue in the first place. Lost in the current discussion is the willingness or desire to first address an issue of primary importance.

Is the state willing and able to assist local districts with their building management needs?

Until this question is answered, discussion of the practice of utilizing CM and the propriety of using it as a vehicle to satisfy local construction needs may be premature.

THE NEED

The most dramatic factor in the recent increase in construction activity is related to the statewide scramble to reduce class size in grades K-3. Even the installation of portable classrooms requires significant local staff time which includes oversight of the process from planning through completion. The committee heard testimony from districts that are building new permanent structures at the same time as they are installing large numbers of portables. It is thoroughly understandable that such districts do not have sufficient in-house personnel to handle this formidable, but short term, construction workload.

The most direct way for districts to address their in-house management needs is to hire additional full-time staff. The obvious problems with this approach are costs and legal issues considering the limited scope of the management needs in some districts. The hiring of additional project management staff, as full-time employees, would be an added drain on the district's general fund, resources normally dedicated to the district's instructional program and administration. Since the demand for local construction management is a relatively short-term need, districts are hesitant to hire expensive professional staff whose value will cease to exist upon the completion of current projects.

CONSTRUCTION MANAGEMENT AS A LOCAL OPTION

One means of avoiding the costs associated with short-term building management needs is to replace GC with a CM firm. By using CM in this manner, a district's additional management needs are included in the budget of each project so as to make these projects eligible for state funding through the SAB. While the district-owner benefits by satisfying their short term

management needs through state funding, the district-owner also assumes additional potential costs in the form of increased risk and liabilities due to the absence of the GC as discussed earlier. Further, there is concern that CMs are being compensated for responsibilities that historically have been addressed by project architects, such as ensuring the change orders being requested by subcontractors are legitimate and reasonably priced.

There are several alternatives the legislature might consider to assist school districts with their short term management needs that do not include additional risk or duplicative spending. One alternative might be a modification to the education code that would allow those projects that hire a single prime CM, in addition to a GC, eligible for SAB funding. In this way, the district-owner would retain the wall of liability protection created by the GC and receive the management help they need. If the building management needs of a district are for multiple projects, the State may wish to consider ways of using SAB funding to assist the district-owner with hiring full time in-house project manager consultants. By hiring in-house consultants for the duration of the need, the district-owner would receive the management help they need while avoiding the complications of having to terminate these employees once the work is complete. The primary concern is that the state may inadvertently be forcing districts to accept higher risk in order to accomplish necessary construction tasks. If the CM model is to be widely utilized, it should be for the sake of maximizing efficiency and not as a way around financial obstacles created and enforced by state regulations.

CONSTRUCTION MANAGEMENT BENEFITS

The use of Construction Management in school projects addresses a number of specific district concerns. One of the primary theoretical foundations of CM is the ability of local districts to build multiple, multifaceted projects without having to hire additional in-house project managers. Further, using a multiple prime CM approach that involves the elimination of a GC preserves the project's eligibility for SAB funding. In addition, beyond providing for the additional project management needs of a district, a CM company may also provide the additional expertise a district may be lacking. Using a CM would appear to satisfy many of the additional management needs of a district without additional cost or the complications associated with hiring new staff.

CONSTRUCTION MANAGEMENT CONCERNS

There are, however, additional concerns associated with a school district using a multiple prime CM. The primary concern in using a CM is the increase in risk for the district-owner. According to testimony, increased risk is associated with the potential difficulty of holding a CM firm liable in cases involving construction defect litigation, a weakened check and balance system that results from loosing the well-defined project control and oversight provided by the GC and a question as to whether, in general, districts possess the necessary sophistication to wisely choose a CM and draft the attendant complicated contracts. As a result, insurance industry representatives testified that past experience demonstrates a higher propensity for litigation connected with CM projects than with non-CM projects with a particular concentration in public school related projects.

According to testimony given at the hearing, one difficulty with CM litigation is the practical ability of counsel to hold a CM accountable in court. While most CMs self- insure and bond, these efforts are only as valuable as the quality of the contract that the district-owner negotiates. If a CM contract goes no further than requiring a CM to perform with a "best effort" and in the "best interests of the client," translating these agreements into forceful litigation that will result in

financial compensation being awarded to the district-owner for failed or inadequate project performance is viewed as problematic. It is, therefore, the opinion of those witnesses who represented the insurance industry before the committee that there is an increased risk of liability associated with CM projects.

It was further argued before the committee that the use of a CM weakens the system of checks and balance associated with the traditional process of public school construction. The traditional process provides that the GC be held directly liable for the failings of a subcontractor. The GC has both financial concerns and a reputation to protect. On the other hand, CM advocates argue that when the owner contracts directly with a trade contractor, each trade contractor is individually bonded and insured so that the overall level of bonds and insurance carried on a project is much greater than with the traditional process where only the GC is required to be bonded and insured.

While these overall bond and insurance numbers may look impressive on paper, how they translate into actual protection for the district-owner remains unclear. First, there is the enormous amount of paperwork associated with managing all the various trade contractors that traditionally were managed by the GC. If the paperwork associated with a warranty is misplaced, a broken pipe or faucet becomes the liability of the district-owner despite the amount of time that has elapsed. In addition, there is the issue of one or more of these small trade contractors going out of business before any warranty expires or litigation is resolved. While increased amounts of bond and insurance money associated with a job may appear better on the surface, it is important to ask how these numbers were increased and if there are hidden costs not immediately apparent.

Further complicating the concern over risk is the additional sophistication required on the part of district-owners when it comes to drafting a contract that is in the district-owner's best interest. It becomes imperative at this point to address what expectation the state can reasonably have concerning district sophistication. On the one hand, proponents of CM are arguing that many districts lack the expertise necessary for the enhanced complexity of today's building environment; on the other hand, CM proponents are also arguing that these same district-owners are adequately sophisticated to draft complicated contracts and properly choose the appropriate CM for their needs.

Is it reasonable to assume that districts in need of CM expertise should at the same time be expected to possess the high level of sophistication necessary for drafting responsible CM contracts and making complicated CM selections?

SOLUTIONS

At a time of chronic local funding limitations, it is understandable that districts would search for alternative ways to address their building management needs. One alternative would be for districts to contract with independent consultants who would serve as in-house project managers for the duration of the district's short term management needs. Even though the hiring of consultants would eliminate concerns over having to terminate staff once the short-term need was satisfied, there is still the issue of the additional cost of hiring these consultants, providing adequate oversight of these consultants, and the subsequent depletion of the district-owner's general fund.

Another way of addressing the short term management needs of local school districts that neither incurs additional cost nor results in increased risk is for the SAB to provide for the

funding of contracted project managers and assistance to local jurisdictions in crafting contractual agreements. Issues of duplicative services might be mitigated by the SAB proviso that districts contractually require architects to carry more of the traditional design-bid-build administrative burden and project management responsibility. While there will undoubtedly be more cost associated with enhancing an architect's responsibilities and contracting with additional project managers, when compared with the cost of a multiple prime CM and the increased risk to the district-owner, this up front investment may very well prove to be the most cost effective long run strategy.

A FURTHER DISCUSSION OF CONSTRUCTION MANAGEMENT

Does the use of CM reduce the conflict of interest between the district-owner and the GC?

CM advocates argue that this desire to profit raises the specter that the GC will manipulate the process so that GCs inappropriately enhance their profit margin at the expense of the district-owner. For instance, it is argued that some GCs might low-bid a project with the intention of submitting a high volume of change orders for the purpose of generating additional profit. It would seem, however, that along with ensuring that the architect and inspector are appropriately contracted with the district-owner, if the district-owner pays the appropriate attention to the project, the combined forces of the architect and inspector would diminish the possibility of the GC taking undue advantage of the district-owner

Are CMs certified by the state?

Technically there is no CM license in the state of California. However, state code requires a great deal from a CM who wishes to work in the public arena including a demonstrated competence in the area of operation and the appropriate state license of either a GC, engineer or architect. The gray area involves defining exactly who is in charge of CM certification and project accountability. Many of those who testified before the committee and are otherwise active in the CM industry were unaware of these requirements so that it might be suggested that oversight in the field is lax. At a minimum, the legislature may wish to consider a state registry where each CM is required to annually establish its qualifications and compliance with state law in order to be eligible for receiving public contracts. In this way, districts would have one more tool that would help facilitate the CM selection process.

Since CMs operate as agencies should their selection is based on qualifications and or certification rather than low bid?

If a district-owner desires a certain quality of GC, those requirements can be stipulated by a competent drafting of the RFP and the subsequent contractual agreements. Further, what is applicable for the CM in the area of agency relationship with the district-owner also applies to the architect who many believe is fully capable of providing similar services.

Do Multiple Prime CM projects save money?

CM advocates argue that CM savings result from:

1) The district-owner publicly bidding jobs at the trade level where the work is actually done.
2) Well defined bids.

3) A direct payment from owner to trade contractor (TC).
4) The owner is receiving the lowest qualified bid rather than the aggregate bid required by the GC.
5) TCs are individually bonded so that all contractors are working alongside similarly bonded peers.

All of the above appear to support the argument of cost savings but as with this entire debate, no empirical evidence was presented to the committee to substantiate these claims
.

What are the advantages that CM provides to a project?

1) Use of SAB funds to pay for management services.
2) Strong budget and scheduling oversight.
3) Uniform management and record keeping for each project.
4) Plans well prepared and coordinated.
5) Marketing effort for the bidding process.
6) Professional review and analysis of the bids.
7) Management works problems out and thereby diminishes the probability of litigation.

It is unclear which of these items could not be addressed by either additional project managers or the architect in a well developed contractual agreement. CM proponents claim:

1) The owner has better control of a project. Since owners have knowledge of every trade contract, the owner knows exactly what moneys are being paid to whom, for what and when as a project proceeds.
2) Aggressive management on behalf of owner facilitates scheduling of trade contractors for early completion.

Both of these arguments again appear to favor CM as a means to satisfy needed district-owner expertise, but at the same time require a sophisticated level of understanding and capacity on the part of an district-owner to maximize a CM project that is not guaranteed.

What are the disadvantages of CM?

1) The district-owner looses a substantial degree of procedural control.
2) Contractual agreements may be complicated and difficult to enforce.
3) There may be an unwillingness on the part of the CM to assume risk/responsibility in particular project associated decisions where a project manager is directly accountable to the owner/employer.
4) There may be an increased propensity for construction related litigation.
5) The CM adds a layer of bureaucracy that duplicates the traditional role of the Architect and General Contractor.
6) Architectural integrity may be compromised as the CM retains some elements of control that have traditionally resided with the architect.

CONCLUSION

Testimony provided by local school districts indicates that CM is being effectively utilized by school districts all over California. CM provides administrative services and construction expertise that many districts lack. The ultimate viability of this method of project delivery still, however, remains uncertain, as little data is available to substantiate the projections of CM

proponents of cost savings and project acceleration. It appears likely that in many cases, CM may prove to be as effective a method of delivering quality school projects as Design-Bid-Build has proven. It is incumbent on the legislature and the appropriate agencies to assure that proper controls are in effect to support districts in providing oversight and direction in CM school construction projects. These measures will assist in ensuring that district projects are completed with maximum efficiency, fiscal accountability, within prescribed timelines, and consistent with the laws of California. As data becomes available, the legislature and the appropriate state agencies should establish a common criteria that local agencies can use to determine whether a project is suitable for CM and if a particular CM firm is appropriately qualified and competent to participate in any particular building construction or modernization project.

Design Build in Public School Construction: A Post Hearing Briefing

The use of design-build as a method of organizing public school construction has gained a great deal of attention over the past few years. From the Design Build Institute of America in Washington, D.C., to statewide construction industry advocacy groups, to individual owners and contractors, there is a great deal of pressure on the State Legislature to alter existing law to accommodate design-build. In fact, SB 50 passed last session requires the State Allocation Board to adopt guidelines by June 30, 1999, to achieve measurable reductions in the costs of school facilities construction. Included in these prospective guidelines are alternate cost-saving construction methods such as design-build.

Design-build advocates argue that the design-build construction method produces less expensive yet higher quality buildings at speeds unattainable from its traditional counterpart design-bid-build. While numerous industry-sponsored studies along with anecdotal information support these claims, empirical evidence has yet to replicate these results save for one, a faster delivery time. Compounding this lack of objective collaboration is the concern that design-build results in the exposure of unnecessary risk to the otherwise unsophisticated school district owner.

The apparent gulf between the position of design-build advocates and empirical research may lie in the structure of the argument itself. Rather than thinking of the design-bid-build vs. design-build debate as a matter of competing ideologies, a more productive approach may be to compare and contrast the individual components of each of the construction delivery strategies now being utilized.

Design-build, like its counterpart design-bid-build, is a collection of dynamic systems that produce various attributes. To say for instance that design-build produces a faster delivery time than design-bid-build is to potentially mislead the audience into thinking that a faster delivery time is a characteristic unique to design-build projects. In fact, any attribute associated with this particular construction method, such as a faster delivery time, may also be attainable under the design-bid-build method.

For instance, cost savings is a common attribute cited by design-build proponents. Beyond issues of whether or not cost savings are demonstrable through the use of design-build, there is the question of what specific dynamic of design-build leads proponents to this conclusion and is this dynamic the sole property of design-build? Arguably, design-build earns its reputation for cost savings in large part due to the emphasis of owner preplanning prior to the beginning of construction. By preplanning, the owner theoretically eliminates the expense of unnecessary change orders. The question then is: Is the impression that design-build reduces cost of a project a product of design-build as a delivery system or only the design-build emphasis on owner preplanning - an attribute that is easily transferable to the design-bid-build scenario?

This report concludes that design-build and design-bid-build could conceivably be creatively melded to produce a delivery system that may provide the promised benefits of design-build without sacrificing the desired security of design-bid-build. The result of this blending process arguably offers much of the freedom local districts desire while preserving the traditional checks and balances that characterize the design-bid-build process.

Examples of these potential adjustments to design-bid-build could include:

- Modify existing law to allow owner selection of pre-qualified general contractors to be based on the three lowest bids with a percentage cap on the spread between the lowest and highest of these three bids;
- Allow for DSA approval of plans that are "performance" based so that in cases where a firm and predetermined guaranteed maximum price has been agreed upon, the independently contracted architect/engineer could work collaboratively with the general contractor to design the project's systems.

The design-build vs. design-bid-build discussion is nothing more than an analysis of two competing systems that are both designed to produce similar results, i.e., good quality buildings at a reasonable price that are built in a reasonable time.

If government is to favor one system over another, government is also responsible for ensuring the system of choice is up-to-date and in keeping with market trends. Therefore, the design-bid-build vs. design-build debate has fundamentally challenged the status quo of the design-bid-build system in a critical and responsible way.

It is clear that design-bid-build is lagging in its response to the forces of market evolution. Concern over this lag should arguably be compounded by the recently passed $9.2 billion school construction bond measure. Therefore, it is imperative that the legislature look closely at the dynamics of these two systems to ensure that upcoming legislation satisfies the government's responsibility for ensuring the systems being utilized in the public sector are effective and efficient without increasing the burden of risk on public agencies.

The Joint Legislative Audit Committee (JLAC) held an informational hearing on July 15, 1998, concerning the design-build (DB) construction process. This hearing was the third in a series of informational hearings that examined alternative ways to facilitate the construction of public schools.

California's public school districts have historically relied on the design-bid-build (DBB) method of construction delivery for the better part of this century. The term *construction delivery process* refers to how the owner of the soon to be built project aligns itself with the architect and the various trade contractors who actually perform the work. Now that California is preparing to spend an unprecedented $9.2 billion for new school construction and modernization over the next ten years, numerous alternatives to the DBB construction delivery process are being considered.

The two main alternative construction delivery methods being advanced today are *construction management* and *design-build*. For a comprehensive look at the role construction management plays in the building of California's public schools, refer to the JLAC's Construction Management Post Hearing Paper, July 1998.

The Federal Construction Council Consulting Committee on Cost Engineering defines the DB delivery method in their technical report Experiences of Federal Agencies with the Design-Build Approach to Construction as:

> Any construction acquisition arrangement in which both the design and construction of a facility are covered by a single contract. Such arrangements can take many forms and include many different provisions, but the basic objective is almost always the same: to

> unify responsibility for both design and construction in a single entity, which can be either a single organization or a consortium.[34]

The Design Build Institute of America (DBIA) manual, Design-Build Manual of Practice, defines DB a little differently when it states:

> Design-Build is a method of project delivery in which the owner executes a single contract with one entity (design-builder) to provide architectural/engineering services and construction services. Design-Build is also known as "design-construct" and "single source" or "single responsibility."
>
> By contrast, with "traditional" design-bid-build approach, the owner commissions an architect or engineer to prepare drawings and specifications under a design contract, and subsequently selects a construction contractor by competitively bidding or negotiation.[35]

Richard Walterhouse represented the DBIA at the July hearing. Mr. Walterhouse offered the following testimony as to the nature of DB:

> Mr. Chairman and members of the committee, my name's Dick Walterhouse. I'm Vice President of Charles Panco Builders, Ltd. We're a 35-year-old design build firm with offices in San Francisco, Oakland, Altadena and Newport Beach. It's a pleasure to be here today in front of you.
>
> Today I am representing the Design Build Institute of America. The Design Build Institute of America provides a voice for design build practitioners. It advocates best practices, creates and disseminates educational information, and furnishes advice and support to facilities and owners. The Design Build Institute of America was founded in 1993 to promote the widespread use of design build throughout industry and government. With its headquarters in Washington, DC, the Design Build Institute of America currently accounts for over 390 design build firms on its membership rolls. As compiled by the Engineering News Record magazine, design build members accounted for over $55 billion in construction put in place in 1997.
>
> The design build method of project delivery is truly growing at an amazing rate. Those in the design and construction industry believe that the current rate of growth, the design build method of project delivery will be used to produce 50% of all non-residential construction projects by the year 2010.
>
> Before going further, I'd like to reiterate what the definition of design build is. Design build is a method of project delivery in which one entity, the design-builder, executes a single contract with the owner to provide architectural engineering services and construction services. This one entity is responsible to design and build the project at a guaranteed price and schedule based upon performance criteria established by the owner. Project owners, both public and private, across the United States are finding that

[34] "Experiences of Federal Agencies with the Design-Build Approach to Construction" Technical Report No. 122, The Federal Construction Council Consulting Committee on Cost Engineering, National Academy Press, Washington, DC 1993.

[35] Design-Build Manual of Practice, by the Design-Build Institute of America, "An Introduction to Design-Build" pg. 1

> there are advantages for using design build over the traditional design, bid, build method. Very briefly, these are single source contract responsibility, costs and schedule savings, increase innovation, improve risk management and increase quality. There are several studies that support these advantages, and the Design Build Institute of America will be delighted to share those with the committee. The DBIA knows of no studies that show that design build is a less efficient project delivery method.

Gordon Chong is founding principal of an 85-person firm with offices in San Francisco and in Sacramento, and does a considerable amount of public school construction. Additionally, he is the Past President of the American Institute of Architects (AIA) for the State of California. In his capacity AIA president, he had the opportunity to undertake a two-year study that resulted in the development of a handbook on project delivery. Mr. Chong testified at the hearing where he offered the following distinction between design-bid-build (DBB) and DB:

> I think the differences between the various processes of design-bid-build and design-build are such that design-bid-build tries to spell out as much specificity as possible. We'll never catch everything, but we try to identify as much specificity as possible so expectations will be met in the best of circumstances. In a design-build process, the desire is to let the design and construction team establish a better methodology to implement what is desired, so you spend less time in defining the specifics of how to do it, if you will, and in so doing, the owner needs to be willing to release control of those kinds of specificity. If you're willing to do that, then it's a viable methodology.
>
> As Dick Walterhouse of Design Build Institute of America advocates appropriately, the best collaboration can come up with some very creative ideas, but it's not necessarily meeting the expectations in a holistic perspective of what the client perceives is being the most appropriate for the solution. So that's the rub I think that we find with most sub consultants, especially engineers, is that it's driven by a different leadership, rather than a traditional design-bid-build process.

Design-Bid-Build vs. Design-Build: A Comparison of Basic Components

This report approaches the DBB vs. DB discussion by comparing and contrasting the goals and dynamics of an ideal construction project with the basic components of construction delivery. The goals of any construction project include a reasonable:

- Price
- Quality
- End date

Further, all successful construction projects require the following attributes:

- Good management
- Good understanding between the owner and contractor
- Reasonable time to build

And finally, all construction projects involve an:

- Owner
- Architect/Engineer

- Trade contractors

The question is how to best align these six attributes so that the Architect/Engineer and Trade contractors are used with optimum efficiency for the benefit of the owner-districts without their assuming any undue risk.

ANALYSIS

Why use DB over DBB? The JLAC asked Ms. Evans why she, on behalf of her department, supports the use of DB. Ms. Evans responded through her Assistant Director, James Bush, who wrote:

> As Ann Evans testified at the hearing, the State Superintendent of Schools supports innovative, cost effective ways in which the design, construction and educational communities can work together to provide facilities that properly delivers the educational program of the district.
>
> The School Facilities Planning Division of the California Department of Education supports the use of Design-build as an option school districts can choose in order to construct school facilities based on the following:
>
> 1. The CDE recommends Design/Build only if the district is able to include into the pre-design work Educational Specifications definitive enough to list ALL parameters necessary to the facility.
> 2. Clear contracts are developed between the district and the Design/Build Team that implements the educational specifications.
> 3. A clear definition of the relationships between the district and the Design/Build Team needs to be developed to insure construction administration properly occurs.
> 4. Legal advice is absolutely necessary in order to carry out this process.
> 5. The local school board must be made aware of the Design/Build concept.[36]

Mr. Hummel discussed the factors effecting the decision whether or not to use DB in his testimony when he stated:

> I don't really think I could say there's any big difference in that. The reason is as a private practitioner I would use design build because I could recommend and select contractors that I knew and trusted extremely well and they had the same feeling with myself and my clients, and we could hit budgets right on the nose. I imagine the larger projects would attract more design build effort. I'm just assuming that to be the case. But we see a tremendous number of projects that are very successful in the design, bid, build system. Architects have been doing schools for many years and working with experienced school boards have a remarkably good record of quick results, fast turnaround. We just finished a very, very large school project in Central Coastal, California, that was a design, bid, build project well ahead of schedule, right on budget, with no problems, and really that's generally the case. We all hear about the exceptions, but generally the California architects and builders and school boards are turning out a pretty darn fine product we think.

[36] Letter from James Bush to Scott Wildman, August 6, 1998.

Mr. Chong suggests a more collaborative relationship between the design and building teams is possible. Mr. Chong explains that:

> I think to what we're advocating is that there be an integrated approach to the whole process, and I suspect that there is some tension between some architects and some contractors who want to each continue in their own traditional methodologies, but I think you'll find an increasing number of very sophisticated architects and very sophisticated contractors who are working very collaboratively, but the important thing, additionally, I think is to include the other participants in the process that we talk about in our handbook, and those are the owner and the regulatory agencies and the managers, and they cannot be excluded from that process. The tension becomes if a—between an architect and a contractor—is if the leadership is being provided by the contractor, there's often a single point of objective which is that of cost containment, but it loses the focus on the ability of the facility to satisfy the programmatic objections. As you've heard Ann Evans talk about, facilities really are there to support a specific curriculum and to enhance learning. We can have cheap facilities, we can do that, but does it necessarily support a better curriculum? Maybe not. Can the two be blended together? I think through integrated approaches. And I think that that can occur. The design build entity as it's currently procured has some shortcomings in that direction.
>
> I think the differences between the various processes, design, bid, build and design build, are such, if I could characterize them—design, bid, build tries to spell out as much specificity as possible. We'll never catch everything, but we try to identify as much specificity as possible so expectations will be met in the best of circumstances. In a design build process the desire is to let the design and construction team establish a better methodology to implement what is desired, so you spend less time in defining the specifics of how to do it if you will, and in doing so, the owner needs to be willing to release control of those kinds of specificity. If you're willing to do that, then it's a viable methodology, and as Dick Walterhouse of Design Build Institute of America advocates appropriately, the best collaboration can come up with some very creative ideas, but it's not necessarily meeting the expectations in a holistic perspective of what the client perceives is being the most appropriate for the solution. So that's the rub I think that we find with most sub consultants, especially engineers, is that it's driven by a different leadership, rather than a traditional design, bid, build process.

It is arguable that in the business world, every increase in benefit carries with it some related cost. Often times this related cost comes in the form of increased risk. The fact is that risk cannot be eliminated nor can it be fully transferred without cost. Since it is the opinion of this committee that public agencies spending public dollars should be risk adverse, any increase in risk is considered unacceptable – especially when that benefit is theoretical and requires more of the public agency than would be reasonably expected utilizing current practices.

Having said this, there are states, most notably Florida, who have erected a number of complex bureaucracies to facilitate public agency DB in such a way so as to apparently mitigate any increase in risk. Accepting the one apparently agreed upon attribute of DB, accelerated delivery time, it seems appropriate to distinguish between the inherent differences of the public vs. private sector. In the private sector, time is money. The sooner a factory or office is built and ready for production or leasing, the sooner an owner can begin to realize a return on their investment. Schools, however, are another issue. Schools function on annual cycles. Good planning rather than accelerated schedules will determine the appropriate timing for most school projects. It would appear then that the only entity to realize a gain from accelerated delivery in a

school construction context is the DB firm. An accelerated finish time allows a DB firm to increase their volume of business that normally leads to an increase in overall profit margin. While this committee supports increased private sector profit as a rule, it is wary of any plan that requires the subsidizing of additional publicly funded bureaucracies in order to realize this increased profit, as was done in Florida.

Again, applying the basic elements of a good project to this analysis is a good place to start. Consider the following attributes:

- Know what you want
- Restrict bidding (Prequalification)
- Write performance contracts
- Maintain agent owner

If these elements are successfully implemented as part of a construction project, the chances of success are good. The following are suggestions as to how the above might be accomplished within the constraints of DBB:

Low Bid: Currently, the Field Act requires that a GC be chosen based on the lowest responsible bid with responsableness being determined by the prequalification process. Hartsell is suggesting that the law be altered to allow selecting from the three lowest bidders with a 5-10% spread from the lowest bid. This allows for the a greater degree of owner flexibility. This would also facilitate choosing local contractors whose bids were reasonable over larger out of town firms.

There is a precedent. The Public Contract code 20118.1 allows for the selection from the three lowest bidders when choosing a computer supplier.

Performance vs. Complete Plans: Currently, a district must have a full complete set of plans approved by the State Architect prior to putting a project out for bid to a GC. This results in construction delays not normally found in the private sector. DB advocates argue that preliminary construction activities such as grading should take place while the details of a project's various systems are designed in concert with a collaborative architect and GC.

To allow this quality of DB to exist within the DBB process, current law could be altered to allow the architect to draft performance designs prior to hiring a GC. Like "deferred approval" the architect/engineer would in essence "lend" their engineer to the GC for the purpose of finishing the plans in cooperation with the GC. Cooperation between the engineer and GC would be facilitated by specific language. To assure success and accountability in this approach, a guaranteed maximum price structure would be necessary along with stringent oversight by the state to assure existing law was complied with at all times.

Monthly Public Reports Submitted to the OPSC: These reports would include comments from all three participants: the board/owner, the architect/engineer and the GC. Such a system would prevent problems from being ignored. Public disclosure would make the participants more accountable while also serving as a deterrent for those inclined to behave irresponsibly. Possibly these documents could be facilitated by an on-line system so that data could be shared both locally and at the state level. Accumulated information could also be used in future selection processes by other owners who could search the database by individual entities. In

essence, such a process would facilitate partnering and effective prequalification determinations.

Considering the above, if these thoughts are applied to the DBIA's list of DB attributes, can DBB be streamlined in order to effectively produce the same results as DB?

By revisiting the distinguishing attributes of DB as presented by the DBIA, it is possible to observe the ways DBB might be realigned with current owner need to effectively perform as well as DB without the increase in risk:

Cost Savings: Since change orders are a product of unexpected costs, savings are primarily a product of good planning which is itself a product of experience. As Mr. Hummel testified, good management, a good understanding between the owner and contractor and a reasonable time to build are the qualities of any successful construction project. It is arguable that these three qualities are not the exclusive domain of DB. Were these three qualities of a successful project fully employed in the DBB scenario, it is arguable that both delivery methodologies would produce similar cost results.

Quality: DB advocates argue that trust is the cornerstone of their relationship with the DB team. It is arguable that this notion of trust is intrinsically linked to the process by which the DB team is selected. By adjusting the notion of "lowest bidder," to include any of the three lowest bids with a cap of 5-10% spread from the lowest bid, a DBB project could theoretically produce the same degree of confidence a DB project delivers.

Further, by writing into the RFP and in he final contractual agreements that the DB team is expected to work collaboratively with the architect's engineer, the same opportunities for DB quality could be realized in a DBB project.

Time Savings: DB produces time savings because construction is allowed to begin prior to the completion of plans. Yet completed plans are a prerequisite for DSA approval that must take place prior to the hiring of a GC. Although this will require new legislation, the law could be altered to allow DSA approval of "performance" plans that include all aspects of design save the specific designs of the project's systems. It is this latter part of the design process, systems design, that is normally relegated to the engineer. For example, the architect designs the buildings while the engineer designs the specifications of the systems that will heat and cool those buildings. The exact specifications of the heating and cooling system need not be spelled out prior to the grading of the lot and pouring the structure's foundation. By allowing the architect's engineer to collaboratively partner with the builder, the checks and balances of DBB are left in place while still allowing for time savings. This arrangement would be viable in cases where a firm guaranteed maximum price is agreed upon with stringent state oversight to assure compliance with existing law.

Reduced Administrative Burden: the reduction in administrative burden is primarily a product of conducting the decision making process up-front and effectively communicating those decisions to the DB team – and then sticking by those decisions. There is no reason to suggest these quality preparation measures are the sole domain of DB.

In addition, even DB advocates list a number of additional advisory positions necessary to effectively carry out a DB project that include:

- a designer, who is actually an architect, to draft the preliminary design plans in order to facilitate selection of the DB team and then function as the owners "eyes and ears" for the remainder of the project;
- A lawyer with DB experience to draft the RFP and final contracts;
- And, in some cases, an additional staff member to manage overall issues.

Early Knowledge of Firm Costs: Again, as with cost savings, there needs to be:
- A concerted up-front effort to think through a project from beginning to end before putting it out to bid
- Effectively communicating the performance expectations to the winning bid – and then sticking to those expectations -- is an effective way to avoid the majority of change orders that come from a politician-owner changing their mind in the middle of a project.

Singular Responsibility: There is a clear trade off between the structural checks and balances of DBB vs. the notion of *singular responsibility* of DB. It is arguable that not only is the notion of singular responsibility problematic as the DB team is an agent of the owner rather than an independent contractor and therefore hard to pin down in court, but the notion of accepting increased risk for the sake of gaining other advantages is antagonistic to the premise that all public works projects must be risk adverse regardless of the benefit.

RECOMMENDATIONS

- Increase the number of CDE field staff.
- Ensure that field staff are trained to assist the districts in their respective areas concerning the various project delivery methodologies.
- Revisit the architect compensation methodologies to ensure compensation is equitably matched to any shift in architectural responsibilities.
- Create a database on a state level that tracks the success of projects and the participants. Tying this database into a university system may prove to be cost effective and a valuable learning tool.
- A review process to ensure that change orders comply with educational specifications.
- Revisit the relationship between the Office of Public School Construction and the CDE to see where increased collaboration might effect a positive change.
- Refine the Field Act to allow selection of the GC to include any of the three lowest bidders with a spread cap of 5 – 10%.
- Allow for "performance" vs. "complete" plans when seeking DSA approval so that construction may begin while the engineer and GC work collaboratively on the systems designs, thereby allowing for DBB to match the increased speed of DB, under strict state oversight and in cases using a predetermined non-changeable GMP.
- Require monthly reports from all three parties – the owner/Board of Education, architect/engineer and the GC – to be filed electronically with the state for public view.

The JLAC will be working closely with the State Allocation Board and sponsors of legislation related to school construction. It is the intent of this committee to take advantage of our newfound understanding of these issues to ensure public construction dollars are spent with optimum efficiency and minimal risk.

Adults with Developmental Disabilities Post Hearing Report on the Adequacy of Direct Care Staffing, September 1998

On Monday, September 14,1998, Joint Legislative Audit Committee chairman Scott Wildman convened an informational hearing to examine the quality of care that individuals with developmental disabilities are receiving.

Information from a variety of sources suggested that significant and potentially dangerous deficiencies exist in California's system of community care for people with developmental disabilities. Providers of direct services report that they are unable to attract and retain sufficient numbers of qualified staff to insure the health and safety of the people they serve.

Individuals with developmental disabilities have the right to receive services from qualified and experienced personnel. The hearing examined the obstacles to delivering the best quality services to these consumers. The findings, recommendations, along with the written testimony of witnesses are included in this post hearing briefing.

Statutory Responsibilities

1. State law requires California to ensure the health, welfare and the access to effective treatment for its citizens with developmental disabilities.

2. California directly operates State Developmental Centers to meet the needs of approximately 4,700 developmentally disabled persons.

3. California discharges its responsibilities to more than 140,000 developmentally disabled persons through a coordinated system of community based services.

4. California contracts with private, non-profit, Regional Centers to provide intake, diagnosis, referral, case management, and quality assurance services for persons with developmental disabilities who receive services in community settings.

5. Regional Centers contract with independent service provider organizations from which they purchase services identified on Individual Program Plans.

6. California establishes the reimbursement rates that community based service providers receive for services they provide to clients of the Regional Centers.

7. California is responsible for funding community based service providers at a level that permits those providers to maintain a sufficient number of qualified direct care personnel to meet the health, safety, and treatment needs of its citizens with developmental disabilities.

Does a shortage of qualified direct care workers in fact exist?

1. Community service providers have experienced a turn-over in direct care positions approaching 100% per year since 1992.[37]

[37] ARCA Wage Study 1992

2. The exodus of the most qualified and experienced staff has accelerated over the last five years as a function of expanded job opportunities that pay significantly higher wages in both the public education system and the private sector.

3. Direct care staff recruitment efforts are failing, leading some direct care positions to remain vacant for 60 to 90 days.

4. The experience and educational qualifications of newly hired staff are significantly lower than those of the individuals they are replacing.

What are the causes of the labor shortage?

1. Community based service providers pay qualified direct care personnel an average of approximately 30% to 50% less than the wage paid to employees of the State of California who perform substantially similar duties in State Developmental Centers.

2. Community based service providers pay qualified direct care personnel an average of approximately 60% of the wage paid to employees of public school systems who perform substantially similar duties.

3. Both public education and the private sector are experiencing a shortage of qualified and competent employees and are, therefore, hiring a large number of these employees away from community based service providers.

4. The California Budget for 1998-99 exacerbates this crisis by not substantively increasing funding for community based providers.

How does this shortage impair California's ability to discharge its statutory responsibilities?

1. As a result of the statewide shortage, accredited service providers often fail to provide sufficient numbers of qualified and experienced direct care staff to meet the health, safety and treatment needs of persons placed in their care.

2. A severe shortage of qualified direct care personnel has led to neglect and even injury to some developmentally disabled consumers of services.

3. The absence of qualified direct care staff has led to the denial of necessary and legally guaranteed treatment for people with developmental disabilities.

Is action by State government necessary to meet California's statutory responsibilities?

1. California must increase the number of qualified, direct care personnel to meet current statutory and regulatory standards for the care and treatment of its developmentally disabled citizens.

2. For more than two years California has failed to provide funding sufficient to enable its community based service providers to attract and maintain adequate numbers of qualified direct care personnel.

3. The result of long term under funding is a wage scale discrepancy of 40% to 70% between community based providers and State or public education employers recruiting for similar personnel.

4. The California Budget for 1998-99 provides significant new funding for State Developmental Centers and for Regional Center oversight. It does not materially effect rates of reimbursement to community providers. As a result wage levels in 1998-99 will not rise sufficiently to reduce the flow of qualified direct care personnel out of community based services.

Conclusion

California's Lanterman Act would be an example of good public policy if it were efficiently and effectively executed. In the years since its codification in 1969, several hundred thousand families have been able to care for their profoundly disabled children within their family structure instead of being relegated to only visiting them in State operated and funded institutions. During this time, the population in California's State institutions has decreased from 15,000 to less than 4,000, even as California's population has grown by over 20 million people.

The community based service system mandated by the Lanterman Act capitalizes on the commitment and creative resources of community based non-profit organizations to discharge California's responsibility to developmentally disabled citizens. During recent periods of economic recession, the volunteer and fundraising capabilities of these organizations were stretched to make up for State funding that was withdrawn or withheld.

But now, many years of neglecting the basic needs of these community based service providers has caught up with the State of California. For more than 15 years California has failed to reimburse its service providers for the true and reasonable costs of discharging California's responsibilities to its most fragile citizens. With imposed rate ceilings and insufficient appropriations to meet recognized expenses, we are failing to meet our legal responsibilities.

Recommendations

The single and clearest message of this hearing is that California's best and most dedicated community service providers are beginning to fail. Their inability to attract and retain qualified direct care staff is placing the lives of developmentally disabled citizens in danger.

California must act immediately and decisively to reverse this trend and to stabilize its community based service providers.

California must immediately provide sufficient funding to enable community based providers to pay qualified, direct care personnel wages that are comparable to those paid to state employees and other public employees performing substantially identical duties.

California must immediately establish professional standards for direct care personnel and begin to develop a system for training and certifying direct care personnel serving the developmentally disabled.

Legislation will be introduced in the 1999 session to address these problems.

State Auditor Reports

Government Code Section 8546.1 states in part "…The State Auditor shall conduct any audit of a state or local governmental agency or any other publicly created entity that is requested by the Joint Legislative Audit Committee to the extent that funding is available and in accordance with the priority established by the committee with respect to other audits requested by the committee. Members of the Legislature may submit requests for audits to the committee for its consideration and approval. Any audit request approved by the committee shall be forwarded to the State Auditor as a committee request…"

The Joint Legislative Audit Committee has the responsibility, in part, of directing and prioritizing all work of the independent California State Auditor. In 1993, JLAC directed the State Auditor to perform no discretionary audits at all. In 1994, only three audits were initiated by the Committee, and in 1995, nine audits were directed by JLAC. Due to the virtual inactivity of JLAC during this period, legislators turned away from JLAC and sought to enact legislation that mandated the State Auditor to perform audits - a lengthy and involved process which required concurrence from the Executive Branch of government, whose agencies were often the subject of proposed audits.

Fortunately for the citizens of California, JLAC has returned. The State Auditor was directed by JLAC to perform no less than seventy performance and fiscal audits during 1996-1998. The pace of legislative oversight activities performed by the Committee and the State Auditor promises to continue to increase significantly under the leadership of the current Chairman.

Under Government Code Section 8546.1, requests to direct the State Auditor to conduct an audit may be submitted to the Committee by any member of the legislature. The Committee then decides whether to direct the State Auditor or the Bureau of State Audits to conduct the requested audit, to conduct a modified audit at the direction of the Committee, to hold the audit request for future consideration or to deny the audit request.

Upon completion of an audit, the Committee may take action regarding issues related to the completed report.

Audit Reports that were authorized in 1997 and have been released in 1998

97101 Community Redevelopment Agencies: Surplus Balances in Lower-Income Housing Funds are Overstated, Suggesting a Need for More Statewide Oversight and Direction, March 1998

Senator Barbara Lee and Senator Byron Sher requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of community redevelopment agencies' compliance with state law regarding the spending deadlines for "excess surplus" Low and Moderate Income Housing Funds, and specifically, to review the compliance with the spending deadlines of 21 redevelopment agencies that reported balances of $500,000 or more in "excess surplus" Low and Moderate Income Housing Funds in fiscal year 1994-95.

Background

Under the Community Redevelopment Law, the Health and Safety Code, Section 33000 et seq., the Legislature created a mechanism for communities to form redevelopment agencies. Each redevelopment agency is empowered to prepare a plan and carry out redevelopment projects intended to eliminate blighted areas in the community. There are currently over 700 redevelopment projects that have been established in over 350 communities statewide.

Legislation passed in 1976 amended the Health and Safety Code to require redevelopment agencies to set-aside 20 percent of their annual property tax increment revenues in a Low and Moderate Income Housing Fund (L&M Fund) to increase, improve, and preserve affordable housing. This law was amended in 1988 under the so-called "Use-It-Or-Lose-It" law. This law requires redevelopment agencies to identify the "excess surplus" in their L&M funds and promptly spend it on affordable housing. Excess surplus is defined as unexpended or unencumbered L&M greater than $1 million or the total amount of property tax increment revenues placed in the L&M Fund in the preceding four years.

The deadline for spending excess surplus funds is dependent on a number of factors. However, the first deadlines that affect most of the redevelopment agencies are January 1, 1997, July 1, 1998, and each July 1 thereafter. Failure to spend excess surplus funds by the prescribed deadlines will result in forfeiture of the funds to the county housing authority. Moreover, redevelopment agencies failing to comply with these provisions are subject to further sanctions such as a prohibition from encumbering or spending any more money until they spend their excess surplus.

The Bureau of State Audits issued an audit report on redevelopment agencies in November 1996. The purpose of that audit was to take a broad view of redevelopment agencies statewide to determine whether they were effective in removing blight and spending taxpayers' dollars appropriately. The BSA concluded that the effectiveness of these agencies is difficult to measure because the definition of blight is broad and redevelopment agencies are not required to report on their effectiveness. It should also be noted that no single state department has oversight responsibility for redevelopment.

Audit Results

The California Department of Housing and Community Development (department) must report each year on the status of the redevelopment agencies low-income and moderate-income housing funds. As of June 30, 1995, the department reported that 44 agencies had accumulated excess balances in their low-income and moderate-income housing funds, totaling approximately $51.7 million, that were subject to a mandated January 1, 1997, spending deadline.

The Bureau of State Audits found that actual low-income and moderate-income housing funds excess balances are far less than reported and there are problems with the administration of community redevelopment. Due to the lack of oversight, redevelopment agencies fail to provide accurate and consistent information on the mandated amount of property tax dollars they allocate and spend on low-income and moderate-income housing. As a result, the department has no way of knowing how much mandated money has not been spent. Specifically, the Bureau of State Audits found the following:

- The department reported 21 redevelopment agencies had excess balances in their low-income and moderate-income housing funds greater than $500,000. Of the 21 balances, 17 balances were overstated and one balance was understated.

- Only 12 of these 21 agencies actually accumulated excess balances with a combined total of approximately $13.7 million.

- Inconsistency in how agencies report the availability of their funds is partly due to vague instructions in the law for calculating excess balances.

State law does not provide for the oversight of redevelopment by a state agency that has authority to enforce compliance with statewide policies regarding low-income and moderate-income housing activities. Compliance depends on local legislative bodies' interpretations of the legal and regulatory requirements. However, the Bureau of State Audits' review of practices used by 51 redevelopment agencies shows that some do not comply with laws and regulations governing redevelopment activities. Specifically, the Bureau of State Audits found the following:

- The redevelopment agencies of the cities of Hollister and Loma Linda do not ensure that their respective funds receive the designated amount of property tax dollars to provide housing for low-income and moderate-income households.

- The Redevelopment Agency of the City of Fremont has developed and implemented a system to properly allocate planning and administrative costs to its fund. The redevelopment agency could not support $25,000 in costs for salary and benefits it charged to its fund in fiscal year 1995-96.

- The Culver City Redevelopment Agency did not follow the narrow restrictions of the law for spending designated low-income and moderate-income housing funds outside an agency's territorial jurisdiction when it spent $750,000 for housing outside its city limits.

Finally, the State Controller's Office guidelines for compliance audits of redevelopment agencies do not contain sufficient audit procedures to determine whether agencies use redevelopment funds to provide affordable housing as required by law.

Audit Recommendations

The Legislature should do the following:

- Clarify its intent for the treatment of the proceeds of bonds and other debt deposited in the low-income and moderate-income housing funds when calculating excess surplus and amend the law to provide complete and specific requirements to the redevelopment agencies.

- Consider amending the California Government Code, Section 53895, which imposes fines on redevelopment agencies that do not file reports, to also include penalties for deficient or noncompliant reports.

- Consider amending the Health and Safety Code, Section 33080.1 to require the calculation for excess surplus low-income and moderate-income housing funds to be included in agencies' audit reports and to be covered under the independent auditor's opinion on compliance with the laws and regulations governing redevelopment activities.

- Continue its efforts to require county auditors to provide redevelopment agencies the amount of property tax revenue allocated to the agencies and payments to other taxing-collecting entities deducted from the allocated taxes.

- Determine the extent of monitoring necessary to ensure satisfactory compliance with state policies to provide affordable housing through community redevelopment efforts, consider designating a state agency to oversee these efforts, and provide the authority to enforce the laws and regulations governing redevelopment activities.

The State Controller's Office should revise its *Guidelines For Compliance Audits of California Redevelopment Agencies* to include the critical tests and other audit procedures needed to determine whether a redevelopment agency complies with state policies regarding the production, improvement, or preservation of housing affordable to low-income and moderate-income households.

After the law regarding the calculation of excess surplus is clarified, the State Controller's Office and the Department of Housing and Community Development should consider taking steps to further educate the redevelopment agencies about the law's intent and requirements.

Agency Response

The Bureau of State Audits received comments from the Department of Housing and Community Development, the State Controller, and the 11 community redevelopment agencies which were given specific mention in the body of the report. The Department of Housing and Community Development and the State Controller agreed with the findings and recommendations. In addition, the agencies generally agreed with the findings. However, six of the redevelopment agencies disagreed with the conclusions regarding their compliance with the law that governs community redevelopment activities, and the conclusions on the adequacy of their internal accounting controls over their agency's assets.

Comprehensive legislation addressing this issue will be introduced by the JLAC in the 1999 session.

97102 State Legal Contracts: The State Could Reduce Its Reliance on Outside Counsel and Better Manage Contracts, December 1997

Assemblymember Howard Wayne requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit on state contracts with private counsel for legal services. Of specific concern is the propriety of contracts and the cost effectiveness of contracting with private counsel for legal services rather than providing legal services with existing State employed legal professionals. An additional concern involves the propriety and consistency of the methods used to review and evaluate invoices from private counsel, the sufficiency of legal staffing in the Department of Justice (DOJ) and other state agencies, and how the State can improve its delivery of legal services.

Background

Legal services for the State are provided by three primary sources; the DOJ, in-house counsel of state agencies, and private outside counsel. Under the direction of the Attorney General, the DOJ enforces state laws, provides legal services to state and local agencies, and provides support services to local law enforcement agencies. The DOJ's budgets for 1996-97 and 1997-98 totaled approximately $391 million and $387 million, respectively.

In general, the law requires that agencies use the attorney general as their legal counsel; however, with written consent by the attorney general, agencies may contract with private counsel for legal services. Additionally, 14 state entities are not required to obtain consent from the attorney general for contracts with private counsel for legal services. Three other state entities that do not receive legal services from the attorney general and operate accordingly with the consent by the attorney general.

For the General Fund agencies that the attorney general provides legal services, the budget amounts are included in the DOJ's annual budget and not the budgets of the individual agencies. For special funded agencies, the attorney general is reimbursed at $98 per hour for attorney services and $52 per hour for paralegal services (fiscal year 1996-97) rates. The attorney general can also enter contractual agreements with general fund agencies to provide legal services.

The attorney general grants agencies permission to employ outside counsel for several reasons. The 1996 Budget Act required the DOJ, by September 1, 1996, to report to the legislature the amount of money expended by state agencies for outside counsel for the fiscal year 1995-96 and identify the amount expended which resulted from lack of resources in the DOJ. In its September 1996 report to the three legislative committees, the DOJ reported that state agencies spent approximately $30.7 million for private counsel.

The DOJ is also required to report by March 1, 1997 on reductions realized in the use of outside counsel due to the restoration of general salary increase funding. Agencies obtaining written consent from the attorney general for private legal services are also required to obtain approval from the Department of General Services' Office of Legal Services. Legal services contracts are not subject to competitive bidding or advertising

Audit Results

During fiscal year 1995-96, DOJ client departments spent $29.6 million on outside counsel. Of this amount, $12.3, or 42 percent, resulted from the DOJ's determination that it had insufficient staff to provide counsel. According to the DOJ, changes in laws and practices in litigation, among other factors, have greatly increased its workload, causing the DOJ to assign staff to different types of litigation than they would otherwise take on . Further, the DOJ asserts that its workload has historically exceeded its resources. These conditions have contributed to the DOJ's decision not to represent departments in litigation.

Moreover, although the DOJ may authorize departments to use other counsel for litigation, the law does not explicitly allow DOJ consent as justification for departments to contract with outside counsel for these services. As a result, departments that contract with outside counsel may not comply with the state law mandating use of civil service employees for work that civil service employees normally perform. However, a DOJ official believes that the DOJ's decision not to represent departments, together with the lack of other options, justifies the use of private counsel because of insufficient staffing at the DOJ. Nevertheless, recent actions by the State Personnel Board and courts cloud this issue.

The Bureau of State Audits also noted that departments did not take advantage of opportunities to better manage contracts with outside counsel. Specifically, they have not exercised the management tools, such as litigation plans and budgets, already available to administer and control legal services contracts. As a result, they a have overpaid for some services or paid for disallowed costs.

The private sector has recently focused on improving the management and oversight of its legal contracts and developed the Uniform Task-Based Management System. The system is a standardized, industry-wide approach to task-based planning, budgeting, and billing. It is being adopted by proactive corporations and law firms.

Audit Recommendations

The State's current policy makes the DOJ the primary litigator for most departments. If the Legislature believes this policy continues to be appropriate, it should have the DOJ complete a study to determine if it has sufficient resources. Based on the results of such a study, the Legislature should authorize sufficient staffing and funding so that the DOJ does not decline work because of insufficient resources.

The Legislature should consider modifying state laws to permit departments to contract for litigation services when the DOJ declines to represent them because of insufficient staff and make the departments' use of management tools mandatory for legal services contracts.

Agency Response

With the exception of the Department of General Services (DGS) and the California Department of Corrections (CDC), the departments generally agreed with the findings and recommendations.

The DGS agrees with the concept of developing guidelines for managing legal services contracts. However, the DGS believes that a considerable amount of study will be required, thus making it a long-range project. Also, the DGS is concerned that under a task-based billing

system, some outside counsel would be unwilling to work for the State or would charge more to provide this information.

The CDC generally agrees with the findings and recommendations, but believes that any management system to control the legal and business aspects of litigation needs to be flexible.

97103 Kern County: Management Weaknesses at Critical Points in Its Child Protective Services May Also Be Pervasive Throughout the State, January 1998

Senator Costa requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit involving the Kern County Child Protective Services and related public agencies charged with the responsibility of protecting children. Specific concerns arose over events surrounding the deaths of eight children from suspected child abuse over the past 15 months.

Background

The Family Preservation Bureau (bureau) within the Kern County Department of Human Services (department) is responsible for providing services for the prevention, intervention, and reunification of children who are abused neglected, or exploited.

According to information obtained from Kern County, the bureau has a 24-hour response system designed to receive, investigate, and evaluate reports of child abuse and neglect. The emergency response services provide the initial intake for referrals. Emergency response workers evaluate the referrals and determine if an immediate in-person response is necessary. If a child is placed in protective custody, the bureau's court intake unit prepares all petitions, documentation and evidence for presentation at juvenile court hearings. As part of its programs to protect children and strengthen families, the bureau provides family maintenance, family reunification, and permanent placement services described below:

Family maintenance services are provided in order to maintain the child in his or her own home. These services are provided to certain families such as those under the supervision of the department pursuant to a court order, families who are willing to participate in corrective efforts, and where it is safe for the child to remain in the child's home with the provision of services.

Family reunification services are provided to reunite a child separated from his parent because of abuse, neglect, or exploitation. These services are provided when a child has been placed in out-of-home care or foster care.

Permanent placement services are provided for children who cannot safely live with their parents and are not likely to return to their own homes.

In 1995, Kern County opened a child assessment center to provide additional services to victims of child abuse. The county's department assumed the lead role in developing this program. The services provided at the center range from abuse investigations, forensic interviews, medical evidentiary examinations, and social and mental health services.

During the period January to December 1996, the county reported that it received 16, 379 reports of child abuse and neglect.

Audit Results

The Kern County Department of Human Services' Family Preservation Bureau (department) and the Juvenile Court (juvenile court) of the Kern County Superior Court are responsible for providing protective services to children who are at risk of being abused or neglected by a

parent or guardian. The California Department of Social Services (DSS) is responsible for supervising the statewide system of child welfare services, including child protective services. The Bureau of State Audits identified problems at three points where critical decisions are made in the review of the department and the juvenile court: in the department's emergency response to its allegations, in its investigations of these allegations, and in the juvenile court's administration of hearings. In addition, the DSS has only recently improved its efforts to monitor child protective services in the State.

The following weaknesses were found in the department:

- It's emergency response phone room staff do not always use established checklists to ensure proper decisions are made.

- Investigation unit staff do not always initiate or complete investigations promptly, obtain information from collateral contacts, complete risk assessments in determining the risk of future abuse or neglect, hold required strategy conferences between supervisors and staff when investigating a referral for a family previously investigated, or provide feedback to mandated reporters.

- The Court Intake, Family Maintenance, Family Reunification, and Permanent Placement sections do not always visit the abused or neglected children or the parents in accordance with timelines established by law.

These weaknesses have been caused in part by a dramatic increase in referrals over the past few years. However, the department's ineffective management of its operations is also a factor. For example, the department does not always provide prompt or effective supervisory reviews of its social workers' performances. Further, the department has not established a systematic method of monitoring the employees' workloads, nor has it developed procedures for its employees to follow in providing child protective services.

The juvenile court is generally effective in adjudicating the cases of abuse and neglect that the department brings to it. However, because it has only one judge to preside over contested cases, the juvenile court often continues hearings, which lengthens the time that minors must remain in a contested dependency proceeding. Lengthy proceedings may add to the degree of stress placed on minors by the dependency process. Furthermore, the Bureau of State Audits found that the juvenile court does not have an information system to monitor its workload or actions and to determine how it is operating.

The DSS has not always fulfilled all of its responsibilities in implementing and maintaining a statewide system of child protective services. Specifically, until fiscal-year 1996-97, the DSS had not conducted timely compliance reviews of the counties' child protective services programs and did not ensure that those reviews included an evaluation of the counties' emergency response or administrative practices. The DSS does not track the number of child deaths that occurred due to abuse and neglect. Without timely compliance reviews of county child protective services agencies, the DSS cannot be assured that children in the State are protected from abuse and neglect. Further, because the DSS does not obtain information regarding child deaths due to abuse and neglect, the DSS may not be able to identify county or systemic weaknesses that require regulatory or statutory change to properly address those weaknesses. Recently, the DSS has shown leadership in improving the child protective services program in certain areas, such as developing a research-based, statewide risk-assessment tool and establishing regional training academies.

However, the DSS needs to provide more guidance to counties that provide child protective services. As part of this audit, all 58 counties in the State were surveyed and many counties were found to experience the same problems identified in Kern County. For example, of the 46 counties responding, the Bureau of State Audits found the following:

- None of the counties used research-based risk assessments.
- Forty do not have quality assurance positions within their organizations to monitor the quality and effectiveness of the services they deliver.
- Forty have not identified outcomes by which to measure effectiveness.
- Fourteen have no method to monitor social worker workload.
- Only seven have developed caseload standards for social workers.
- Twenty-five do not have policies and procedures manuals for employees to follow in providing child protective services.
- Between 1994 and 1996, 295 children died as a result of abuse or neglect.
- Twenty do not review child death cases to determine if county policies or practices need to be revised.

Audit Recommendations

To ensure that it provides prompt, effective child protective services, the department should:

- Ensure that its supervisors provide prompt, effective reviews of its social workers' performances.
- Ensure that its social workers initiate investigations of immediate and 10-day referrals within required time frames and complete the resulting case plan within 30 days.
- Institute a tracking system that will allow it to monitor the caseloads and workloads of its employees.
- Develop a caseload standard for each of its sections so that it can better determine when social workers are overburdened.
- Once the department has developed an effective caseload and workload tracking system and has established a caseload standard for its social workers, it should ensure that it has sufficient staff to stay within its caseload standard.
- Develop procedures for its employees to follow in providing child protective services.

To ensure that it provides appropriate and timely permanent placements to children within its purview, the juvenile court should:

- Implement an information system that would allow it to

- Monitor continuances and their causes,
- Monitor compliance with statutory hearing and process timelines, and
- Provide other pertinent management information such as court workload statistics.

- Consider implementing a mediation program.
- Consider assigning a presiding judge to at least a three-year term in accordance with local and state rules of court.

To prevent unnecessary continuances and shorten case processing times, the department should ensure that it submits its reports to the juvenile court at least 48 hours prior to the hearing date, that it submits transport orders promptly, and that it provides adequate notice of dependency hearings to required parties.

To strengthen its leadership role and improve its oversight of the State's child protective services, the DSS should:

- Continue with its schedule to review each county for compliance at least once every four years until it completes the implementation of its statewide automated child welfare services system, and then every three years thereafter.
- Review the counties' emergency response systems and administrative practices as part of its comprehensive monitoring approach.
- Continue to provide leadership to county child welfare agencies through progressive child welfare initiatives.

To ensure that the State is able to better identify trends and county and statewide systemic weaknesses in child welfare services, the Legislature should:

- Continue the pilot project initially started to establish a standardized child death reporting form.
- Require the appropriate state agency to establish a statewide child abuse and neglect fatality database using the processes developed by the pilot project.

Agency Response

The department generally agrees with the findings in this report, noting that it has already begun to address many of the recommendations, including dedication of a supervisor for improved screening and case assignment procedures. The department believes that its new Child Welfare Services Case Management System will help it address many of the issues raised in the report. The automated system will ensure completion of decision support checklists, enable supervisors to monitor unit caseloads, will enable supervisors to monitor the status of individual caseloads, and automate completion of various notices and forms. In addition to these changes, the department is developing a plan to strengthen child welfare programs which will ensure continuous review and updates of written policies, will dedicate additional management

for oversight and will continue to develop innovative programs to address the increasing number of referrals.

In addition, the juvenile court generally agrees with the recommendations contained in the report, noting that it also has begun implementing many of the recommendations, including the development of an automation project for case management and the implementation of a mediation plan. However, the juvenile court disagrees on the effect that judicial officer turnover has on dependency proceedings.

The DSS generally agrees with the recommendations made in the report, noting that it has already implemented many of them.

97108 Office of Statewide Health Planning and Development: The Cal-Mortgage Program Does Not Minimize the State's Financial Risk When Insuring Health Facility Debt, October 1998

Assemblyman Tom Torlakson requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of the administration of the Cal-Mortgage Program as it relates to the Los Medanos Hospital District. The specific concern is that the program may not be adequately managed to protect the taxpayers' investments in health facilities.

Background

The Cal-Mortgage Program (Cal-Mortgage) was authorized by amendment to the California Constitution in 1968. Cal-Mortgage is administered by the Office of Statewide Health Planning and Development (OSHPD), and was modeled after federal home mortgage programs. The purpose of Cal-Mortgage is to provide a loan insurance program for health facility construction, improvement, and expansion projects, thus stimulating the flow of private capital into health facilities. Under Cal-Mortgage, health facilities borrow money for capital needs from long term lenders, and the OSHPD guarantees the loan using the "full-faith and credit" of the State of California. This guarantee may permit access to the tax-exempt financing markets and permits these borrowers to obtain low-interest rates comparable to those available to the State of California.

The California Health and Safety Code, Section 129173, authorizes the OSHPD to assume or direct managerial or financial control of a Cal-Mortgage borrower upon determining that the borrower's financial status may jeopardize its ability to fulfill its obligations under any insured loan transaction or jeopardize its ability to continue to provide needed health care services in its community. Among other specific actions, the Health and Safety Code authorizes the OSHPD to appoint a receiver for the borrower or the borrower's assets in the superior court in and for the county in which the assets or a substantial portion of the assets are located.

According to Assemblymember Torlakson, Cal-Mortgage auditors had clear indications of financial trouble in the case of Los Medanos Hospital District a year before bankruptcy occurred, yet took no proactive steps to protect the taxpayer dollars invested in the district. In addition, although the OSHPD did recommend a receiver to the bankruptcy court in April 1994, the hospital is still closed and attorney, consultant, and receiver fees now exceed $2 million.

Audit Results

The Cal-Mortgage Loan Insurance Program (Cal-Mortgage) is administered by the Office of Statewide Health Planning and Development (OSHPD). It insures loans for health facility construction in California, including hospitals, primary care clinics, and elderly care facilities. Many of Cal-Mortgage's clients are high-risk borrowers that could not obtain loans without this insurance because their projects are deemed too risky. Accordingly the likelihood of default for Cal-Mortgage clients is significantly higher than it is for clients of larger, private insurers. When its borrowers default and are unable to continue payment on their debt, Cal-Mortgage must pay off the insured debt. Although the very nature of dealing with high-risk borrowers increases the likelihood of defaults, Cal-Mortgage further increases its risk of client defaults with its ineffectual application process, vague guidelines, and incomplete and inconsistent monitoring.

The audit revealed that Cal-Mortgage does not adequately screen applicants because it does not adhere to objective guidelines in its application process. It does not use all available information or standard procedures to assess its applicants' financial viability, nor has it established procedures for determining its maximum level of risk when insuring a client. Due to this inadequate process, Cal-Mortgage has insured a number of financially unstable applicants, some of which have defaulted on their loans.

Cal-Mortgage does not consistently require that borrowers submit information about their financial condition, and it does not consistently conduct timely or structured site visits with borrowers. As a result, Cal-Mortgage may have little notice of financial difficulties before a borrower defaults on its debt. Weaknesses in its monitoring include inconsistent methods to oversee borrowers, a lack of formal procedures for this oversight, and insufficient supervision by Cal-Mortgage management.

Moreover, it cannot effectively monitor the risk in the borrower portfolio because the portfolio database is unreliable, contains numerous errors and is not properly maintained. Finally, because Cal-Mortgage does not have benchmarks or standard criteria for identifying problem borrowers that require executive management intervention, the director of the OSHPD, which oversees this insurance program, may not be fully aware of the risk present in Cal-Mortgage's portfolio.

Audit Recommendations

To improve consistency and minimize the risk of financial loss to the State, Cal-Mortgage should develop a more rigorous process to determine the financial viability of applicants and should define a maximum level of risk that it will accept when insuring a borrower.

The Legislature should consider changing the law to require that Cal-Mortgage develop a maximum level of insurance risk acceptable for loan insurance approval. The new law should ensure that Cal-Mortgage sets the risk level to minimize the potential of loan defaults and the resulting default payments from the Health Facilities Construction Loan Insurance Fund, while still being able to accomplish its statutory mission.

To ensure that Cal-Mortgage adequately oversees its borrowers and is sufficiently warned of those experiencing financial difficulties, it should establish a standard monitoring system for tracking and analyzing borrowers' financial information.

To improve its management information for monitoring and oversight, Cal-Mortgage should periodically review the portfolio database for errors and develop procedures for maintaining and ensuring the integrity of the database.

To ensure that OSHPD management has the information necessary to assess the level of risk in the portfolio, Cal-Mortgage should develop benchmarks and standard criteria for calling an at-risk borrower's financial status to OSHPD's attention.

Agency Response

OSHPD generally concurs with the findings and believes it has made considerable progress in implementing most of the recommendations. However, the OSHPD believes that the Cal-

Mortgage program has had few defaults and that its historical record would seem to indicate effective management of the program.

In response to the Bureau of State Audits recommendations, Cal-Mortgage has stated that it will implement the following, in addition to other recommendations not listed below:

- Establish written guidelines to organize the project officers' review of the loan applications.
- Establish guidelines and provide continuing education in the use of its automated system to maximize its benefits.
- Include comparison of the financial performance of similar types of facilities for purposes of analysis.
- Review guidelines used by private and government lenders and insurers to determine their applicability to Cal-Mortgage
- Undertake to develop more explicit risk assessment criteria that may be applicable for the program.
- Seek to obtain relevant statistical information concerning the applicant's service to Medi-Cal and Medicare patients to determine the applicant's compliance with its community service obligation.
- Establish written guidelines concerning the circumstances under which OSHPD will provide working capital loans in the future.

JLAC will introduce comprehensive legislation based on the findings of this audit.

97110 Office of the Attorney General: Its Office of Gaming Registration Should Protect Tax Documents More Rigorously and Improve Some Procedures, March 1998

Assemblymember Richard E. Floyd requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of the Attorney General's Card Club Registration Unit. Specific concerns had arisen regarding the unit's solicitation, use and storage of confidential statements regarding card club owners.

Background

Chapter 721, the Statutes of 1983, enacted the "Gaming Registration Act." The intent of this act is to provide uniform minimum regulation of the operation of gaming establishments through registration by the Attorney General of those who own or manage gaming clubs. The Attorney General can deny an application for registration for a variety of reasons including making a false statement on the application or having a financial interest in any business or organization outside the State of California, which is engaged in any form of gambling or gaming not authorized by the laws of this state. In order to enforce the provisions of the act, the act provides the Attorney General with broad authority to, "… examine any books and records of any registrant or other person."

Audit Results

The Department of Justice (DOJ), under the direction of the Office of the Attorney General, is responsible for regulating the activities of gaming clubs in the State. Enactment of the Gaming Registration Act (GRA) in 1983 created the Office of Gaming Registration (office) as the unit within the department responsible for overseeing the gaming clubs. The office's responsibilities include registering owners, investors, and manager's of these clubs. As part of the annual registration, the office requires applicants to submit copies of sensitive financial information, such as Internal Revenue Service (IRS) income tax returns. This report focused on the office's solicitation use, and storage of applicants' tax returns.

The office's physical security over sensitive documents appear adequate. However, the office does not protect applicants' tax returns to the same degree as tax agencies. Although consistent with state law, its policy allows a law enforcement agency to access tax returns by providing notification that it is conducting a criminal investigation. This policy is considerably less rigorous than federal law, which specifically requires a court order or the taxpayer's consent to release the returns. Therefore, the office honors certain requests for access to tax returns that the IRS would normally not honor.

In addition, the office does not maintain a standard checklist to monitor the location and status of all sensitive documents for each applicant file. Because of the variety and sensitive nature of these documents, it is important that the office keep track of their status in order to protect the integrity of the file contents. Furthermore, the office does not have formal written policies and procedures that address the physical security of sensitive information, outside requests for sensitive information, and the method for review applications. Finally, the office keeps documents longer than necessary. It has not scheduled hundreds of inactive applicant files for destruction.

Audit Recommendations

In January 1998, the Gambling Control Act repealed the GRA and replaced the office with the Division of Gambling Control (division). The division will be assuming the responsibilities of the office. Therefore, to ensure that it will be objectively and uniformly overseeing the custody of sensitive personal and financial information, the division should do the following:

- Seek statutory authority to protect tax returns in accordance with federal standards. This statutory change would stipulate that the division inform the requestor of an applicant file that the records include federal tax returns and that release f these returns requires a court order or the written consent of the applicant.

- Establish a checklist of all documents contained in the applicant file. The checklist should identify those additional documents that the division specifically requests from the applicant. The checklist should also indicate when these documents were received. For documents that were not received, the division should explain on the checklist whether their absence impacts the decision to license the applicant.

- Prepare formal written policies and procedures covering the physical security of applicant files, outside requests for sensitive information, and the review of applications and renewals for registration.

- Update its document retention schedule and transfer year-old closed files to the State Records Center for destruction.

Agency Response

The attorney general disagrees with the recommendation to protect tax returns consistent with federal standards and states that it would result in an unnecessary limitation on the division's discretion. In addition, he states that the Office of the Attorney General will strongly oppose any effort to create such a limitation or to protect those individuals involved in gambling from law enforcement scrutiny. The attorney general agrees with the recommendations regarding procedural changes and staff has begun to implement many of those recommendations.

97111 Department of Alcoholic Beverage Control: Weaknesses in Its Enforcement Program Leave It Vulnerable to Allegations of Unfair Practices, May 1998

Senator Richard G. Polanco requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of the Department of Alcoholic Beverage Control (ABC). The specific concern involved allegations of selective and discriminatory enforcement activities by the department. This audit was approved by the Joint Legislative Audit Committee in April 1997 and the Audit Report is due to be released in March 1998.

Background

The mission of the department is to administer the provisions of the Alcoholic Beverage Control Act, which provides for the licensing and regulation of the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the State. The department is divided into northern and southern divisions with a total of 24 field offices throughout the State. These offices are staffed with investigators and licensing representatives.

Sworn personnel investigate applications for licenses to sell alcoholic beverages, report on the moral character and fitness of applicants and on the suitability of the premises where sales are to be conducted. Department investigators are peace officers and are empowered to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises. Investigators are further empowered to enforce any penal provisions of the law anywhere in the state. Licensees who violate state laws or local ordinances are subject to disciplinary action and may have their licenses suspended or revoked.

In order to carry out its licensing and enforcement responsibilities, the department also operates several special programs such as the IMPAC, Minor Decoy, and the Special Operations Units. Informed Merchants Preventing Alcohol Related Crimes and Tendencies (IMPAC) is designed to educate licensees about various ways they can participate in reducing alcohol-related crimes such as sales to underage individuals and to obviously intoxicated persons. The Minor Decoy Program allows local law enforcement to use persons under 20 years of age as decoys to purchase alcoholic beverages from licensed premises. The Special Operations Unit is made up of a team of 32 investigators assigned to assist department field offices and their investigators in conducting undercover work involving disorderly premises, illegal narcotics, stolen property, and other investigations that involve vice and criminal activities."

Audit Results

The Department of Alcoholic Beverage Control (department) is responsible for enforcing the Alcoholic Beverage Control Act, which provides for the licensing and regulation of the manufacture, sale, purchase, and transportation of alcoholic beverages within the State. Almost all of the department's enforcement efforts are responses to outside complaints from local law enforcement agencies, citizens, and other state and federal agencies.

The review of the Bureau of State Audits (BSA) assessed whether the department's enforcement actions discriminated against establishments serving minority clientele. Various sampling techniques were used to attempt to address the fact that the department does not maintain sufficient data to conclude whether it discriminated against these establishments. While no pattern of discrimination was found in the limited sample, there was not enough

information to be able to say that no discrimination takes place. This review did uncover other issues of concern in the department, however. For instance, district offices are not always consistent in the promptness or extent of their complaint investigations, even for high-priority complaints. In addition, they are not consistent in the penalties they asses licensees and in their application of mitigating or aggravating conditions during penalty assessments. It is because of the department's clear lack of guidance for prioritizing complaints and assessing penalties that it is vulnerable to accusations of discrimination.

The department also lacks the necessary information for good management decisions, relying on inaccurate data extracted manually from records at the district offices to tract its enforcement activity and to report its workload to the Legislature. Recognizing that its current information system does not meet its basic needs, the department plans to update and enhance its automated system by April 30, 1999.

Audit Recommendations

So that it can better serve the public by ensuring prompt follow-up of complaints that pose an immediate threat to public safety, the department should take the following action:

- Establish a formal system for prioritizing each complaint by type and the number of previous complaints about the licensee. This system should alert district management to high priority complaints that need prompt action.

- Encourage district offices to use the services of Special Operations Units' staff.

- Review alternatives to staffing and workload assignments to determine if other personnel or contractors could handle some administrative duties currently performed by investigative staff, thus freeing investigators for more complaint follow-up.

In addition, to ensure that it assesses penalties consistently throughout the State, the department should provide specific guidance for applying aggravating and mitigating factors and for dealing with subsequent violations when assessing penalties.

Furthermore, so that both headquarters and district offices can more effectively monitor enforcement activities, the department should do the following:

- Develop and implement an efficient system that captures and summarizes the districts' enforcement activity.

- Establish a formal policy requiring headquarters and district management to routinely review patterns of enforcement activities to decide how to distribute its investigative resources.

Finally, to provide for more efficient and accurate reporting of enforcement activity, the department should establish procedures that require the district offices to perform a routine review and periodic reconciliation of the data to the supporting records. The procedures should also require the district office to tract and report complaints and referrals separately from other enforcement activities so that the department will know the status of complaints against licensees.

Agency Response

The Department of Alcoholic Beverage Control concurs with each of the findings reported. Further, it has established timelines for the completion of corrective action on each.

97112 Office of Real Estate Appraisers: Improvements Are Needed in Complaint Processing, Personnel Practices, and in Some Licensing Procedures, March 1998

Assemblymember Roderick Wright requested that the Joint Legislative Audit Committee direct the State Auditor to Conduct an audit of the Office of Real Estate Appraisers (OREA). The specific concern was over reports of a large backlog of complaints that have not been investigated and numerous allegations of mismanagement.

Background

In the wake of the savings and loan failures of the 1980s, Congress enacted the Federal Financial Institutions Reform, Recovery and Enforcement Act in 1989 which, among other things, mandated that all states license and certify real estate appraisers who appraise property for federally related transactions. In response, the California Legislature passed the Real Estate Appraisers' Licensing and Certification Law in 1990. OREA was established and became operational in November 1992 as a separate entity from the Department of Real Estate, as required by federal law.

OREA's two primary functions -- licensing and compliance -- are entirely funded with fees paid by applicants and licensees. Its licensing activities ensure that only qualified individuals are licensed to conduct appraisals. The compliance division is OREA's investigative and enforcement arm. Its primary objective is to provide consumers and businesses with protection against unlawful and fraudulent conduct through the examination of past activities and criminal records of applicants for licensure. In addition, it investigates complaints, and, where appropriate, initiates proceedings to deny licenses or impose disciplinary sanctions. The division may seek to deny, restrict, suspend, or revoke a license and/or impose educational requirements and a fine of up to $10,000 per violation of law applicable to appraisers.

Audit Results

Some management practices of the Office of the Real Estate Appraisers (department) have adversely affected its ability to protect consumers and to fulfill its responsibilities to employees. Currently, it has a large backlog of complaints and is experiencing extraordinary delays in resolving them. These circumstances were partly caused by not establishing an Enforcement Division sooner. Management decisions to staff its Enforcement Division initially with primarily limited-term appointments and to allow positions to remain vacant for long periods also contributed to these circumstances. In addition, personnel decisions, such as making two-year, limited-term appointments without meeting the necessary requirements and failing to maintain adequate records of overtime, may have exposed the State to potential liability.

Further, although the department generally processes license applications in accordance with established guidelines, its policies for reviewing renewals can be improved to ensure that the work of all licensed appraisers meets professional standards. Finally, the department did not promptly address deficiencies upon inspecting some of its licensee testing sites.

The department has two primary functions. One is to ensure the availability of State certified and licensed appraisers to perform real estate appraisals contracted for, or regulated by, the Resolution Trust Corporation or any federal financial institution regulatory agency by licensing qualified appraisers. The department's other function is to investigate complaints of

incompetence, fraud, or unethical behavior against licensed and, in some instances, unlicensed appraisers.

The Bureau of State Audits' review disclosed that the department currently has 641 open complaints. It receives approximately 330 complaints annually and takes an average of 1.5 years to close them. In at least 17 cases, the department's delays had caused it to lose jurisdiction over the complaint, and as a result, it failed to protect the public.

It was also noted that the following specific conditions contribute to the department's delays:

- Turnover, vacancies, and the department's own delays in filling these vacancies have left the Enforcement Division short-staffed.

- Although the department has established procedures to review and prioritize complaints to determine jurisdiction and severity, it does not adhere to them. Specifically, 18 of the 95 cases that were reviewed were not within the department's jurisdiction and the department closed only 2 promptly. Further, of the 686 complaints the department received between January 1, 1995, and October 31, 1997, it has not prioritized 228, or 33 percent, and has no plans to do so. If the department does not prioritize cases promptly, it may not be aware of potential risks to the public.

- The department does not always maintain documentation in its complaint files to support investigation procedures. For example, 10 of the 23 cases for which the department stated that it had conducted appraisal reviews lacked evidence to support its statements. In one instance, because it was unable to locate the reviews, it performed them again.

- Because information in the Enforcement Division database is not always accurate or complete, it is not an effective tool for managing complaints.

Additionally, the Bureau of State Audits noted certain personnel practices in the Enforcement Division that did not comply with the State Personnel Board (SPB) rules and the Fair Labor Standards Act (act). Because the department did not meet all of the requirements for two-year, limited-term appointments, it may have denied some of its employees certain rights, privileges, and benefits that would have accrued to them if they were initially appointed as permanent employees. Also, the department does not maintain records of overtime to ensure that staff members are duly compensated a violation of the act.

In examining the department's licensing program, it was discovered that the department generally processes applications in accordance with established guidelines; however, it has no assurance that the work of 31 to 63 percent of its current licensees meets professional standards. Additionally, for two of the three licensee testing sites the department inspected, it did not promptly report deficiencies to the exam provider nor follow up to make sure the provider promptly corrected these deficiencies.

Recommendations

To improve its current complaint processing and to more effectively and efficiently resolve complaints, the department should take the following actions:

- Develop a method to determine the number of appraisers/investigators needed to meet its current workload and eliminate the backlog. Then, fully staff the Enforcement Division to

meet current workload and consider appointing temporary staff or contracting out to eliminate the backlog.

- Review and prioritize all complaints properly.

- Identify those complaints outside its jurisdiction and recommend other possible courses of action complainants may take. If necessary, promptly forward the complaints to another authority.

- Develop and implement a retraining program to ensure staff maintain documentation, such as checklists, reports, and summaries of investigation activity in the complaint files.

- Continue to identify and correct errors identified in its Enforcement Division database.

To ensure that employees are compensated for their overtime in the future, the department should maintain accurate attendance records that document overtime hours and compensate its employees in accordance with the act.

The SPB should review the department's use of limited-term appointments, and determine the extent to which it may have denied its former and current employees rights, benefits, or privileges that would have accrued to them if they were initially appointed as permanent employees.

The Department of Personnel Administration – Classification and Compensation Division review the department's overtime practices, and determine the extent to which its former and current employees are entitled to receive compensation for any overtime worked.
To improve its licensing process, the department should:

- Subject the work of all licensed and certified appraisers to periodic review.

- Report the results of licensee testing site inspections to the exam provider within 30 days and follow up with the exam provider 30 days thereafter to determine that corrective action has been taken.

Agency Response

The Office of Real Estate Appraisers agreed with the recommendations and stated its intention to eliminate the complaint backlog by the end of the year.

97114 South Coast Air Quality Management District: The District Should Establish a More Equitable Emission Fee Structure and Process Permits More Promptly, July 1998

Assemblymember Grace Napolitano requested that the Joint Legislative Audit Committee direct the State Auditor to conduct a management and fiscal audit of the South Coast Air Quality Management District (SCAQMD). The specific concern involved the impact of SCAQMD regulatory activities on local businesses, schools, and governments.

Background

The SCAQMD is the regional governmental agency mandated to manage the quality of air in the four-county region including Los Angeles and Orange counties and parts of Riverside and San Bernardino counties. By law, SCAQMD has jurisdiction over businesses and other stationary sources, while the California Air Resources Board is responsible for reducing emissions from mobile sources, such as cars and trucks. The SCAQMD regulates an area of 12,000 square miles that is home to more than 14 million people – about half the population of the State of California.

Direct oversight of the SCAQMD is the responsibility of a governing board composed of 12 members, including 4 members appointed by the boards of supervisors of the 4 counties in SCAQMD's jurisdiction; 5 members appointed by cities in the SCAQMD's jurisdiction; and 3 members appointed by the governor, the speaker of the State Assembly, and the Rules Committee of the State Senate, respectively. The members appointed by the various boards of supervisors and cities consist of 1 member of the board of supervisors of Los Angeles, Orange, Riverside, and San Bernardino counties, respectively, and a mayor or member of the city council of a city within Orange, Riverside, and San Bernardino counties. Los Angeles County cities have two representatives, one each from the western and eastern portions of the city.

The SCAQMD's annual operating budget is $97 million. It generates 70 percent of its revenue through evaluation, annual operating, emission, and hearing board fees, contracts, penalties/settlements, and investments. The remaining 30 percent of its revenue comes from an Environmental Protection Agency grant, Air Resources Board subvention, and California Clean Air Act Motor Vehicle fees.

Assemblymember Napolitano authored AB 1114, mandating the same type of audit of the SCAQMD as is specified in this request. The analysis of this bill noted that SCAQMD is the subject of several different audits mandated by the State and federal governments. For example, the SCAQMD is required by the State to contract with an independent auditor to conduct a performance audit every three years to assess the effectiveness of the various programs and determine whether the objectives of these programs are being met. In addition, the SCAQMD is required to contract with an independent auditor every two years to perform an audit of each program or project funded by fees collected to implement the California Clean Air Act. Also, as a condition of receiving federal funds, the SCAQMD must obtain an annual audit for all federal grants in excess of $100,000. The SCAQMD states that it spends more than $72,000 annually complying with the various audit requirements. Notwithstanding the audits previously cited, some of the "audits" cited by the SCAQMD and the bill analyses appear to be reporting requirements rather than actual audits.

Audit Results

The South Coast Air Quality Management District (district), which includes Orange County and part of Los Angels, Riverside and San Bernardino Counties, is mandated to control air pollution using the best available and most cost-effective control technologies. To meet federal and state air quality standards, the district monitors emissions from stationary sources of pollution, such as factories and other businesses. Further, it established a permitting program for entities that construct and operate equipment that emits, or controls the emission of, air pollutants.

The district does not charge emission fees to all facilities that pollute. Its policy ensures that only the largest polluters pay – those facilities reporting emissions of four tons or more for most specified pollutants. For fiscal year 1995-96, only 1,400 (5 percent) of the 26,400 facilities regulated by the district the paid the $21 million in emission fees it collected. Because only a small number of polluters pay emission fees, the method of charging these fees is inequitable.

The district regulates 25,000 other facilities that do not pay emission fees. Most of these facilities (22,500) do not report their emissions to the district because the district's emission billing system requires only a small percentage of facilities to report their actual emissions. Therefore, it does not know the magnitude of the actual emissions that these facilities produce, and the full impact a proportionate-share rate structure would have on all participants could not be determined. However, the Bureau of State Audits believes that a proportionate-share rate structure would better ensure an equitable allocation of emission fees to those generating pollution in the district. By spreading out assessments, those who have not paid, and may collectively contribute a significant amount of emissions, would participate in the emission fee program.

Although the district lacks actual data on the emissions from the 22,5000 facilities not required to report, it gathers information on their potential emissions as part of the permitting process. Based on information from the facilities, the district calculates an estimate of potential emissions. While not an exact measure, the district apparently believes this estimate is reasonable enough to use in combination with other district data for planning and rule-making purposes. The Bureau of State Audits' analysis revealed that nonreporting facilities represent 15 percent to 27 percent of the district's estimated emissions of several key pollutants.

The district generally issues permits to construct within the time period allowed in law; however, many permits to operate take longer than the district's internal timeline of 180 days. Further, the district lacks processing timelines for certain permits. Although some delays are caused by the applicant, district workload and additional permitting requirements affect its ability to promptly process permit applications. Delayed processing potentially allows some equipment to operate outside of district guidelines for longer periods of time, slowing and potentially negatively affecting air quality attainment.

In addition to falling short of its processing goals, the district does not charge enough in permit fees to recover its processing costs. In fact, the district's revenues from permit processing have fallen short of expenditures for several years. To reduce this gap, the district adopted several fee increases at its May 1998 board meeting. However, if the shortfall in fiscal year 1998-99 is similar to that in 1996-97, expenditures will exceed revenues by $4 million even after the fee increases are implemented. Thus, the district will continue to subsidize its permit processing operations with revenues from emissions and permit renewal fees.

The review of other district responsibilities disclosed that it follows procedures to ensure equal opportunity in contracting and employment. Further, the Bureau of State Audits found the key functions and salaries of the district's legal office to be comparable to those of other districts. However, although it appropriately selects research, development, and demonstration projects, the district could improve its reporting of results to the public and its documentation of monitoring efforts. Also, by not fully complying with its guidelines for publishing literature, the district leaves itself vulnerable to criticism that it provides an unfair advantage to manufacturers of certain products by implying a recommendation of the products.

Audit Recommendations

To ensure that those facilities generating pollution in the district pay their proportionate share of emission fees, the district should take the following actions:

- Send a reporting form to all facilities in the district and assess fees based on actual emissions.

- Alternatively, the district could send each facility an annual emission bill based upon the facility's estimate of potential emissions. Each facility would have the option to pay the amount billed or provide the district with documentation on actual emissions.

To ensure that it issues permits within the time period allowed by law or its own internal timelines, the district should take the following actions:

- Continue to evaluate the permit process to reduce the time it takes to issue permits.

- Establish processing timelines for permits to operate that are currently not subject to its timelines.

- Ensure that permit fees are sent to cover the costs of processing rather than depending on other revenue sources to subsidize the permitting function.

To avoid potential claims of unfair advantage from other manufacturers, the district should adhere to all its guidelines and policies when disseminating public information about products.

Finally, the district should ensure that it fully complies with reporting requirements for research, development, and demonstration projects and appropriately documents all monitoring efforts.

Agency Response

Overall, the district disagrees with the characterization that it does not equitably charge emission fees. However, the district generally agrees with the recommendations regarding its permitting process. Additionally, it agrees with the recommendations related to the district's dissemination of public information about products and reporting on research, development, and demonstration projects. Moreover, while the district believes that it equitably charges emission fees and comments that the recommendations in this area may be administratively impracticable, it states that its fiscal year 1998-99 fee study will examine the issues presented.

97115 Los Angeles County: The Office of AIDS Programs and Policy Can Improve Its Management of Grant Funds, May 1998

Senator Richard Polanco requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of Los Angeles County's HIV and AIDS programs. The audit of this program is intended to help maximize the resources available for essential and life-sustaining services. Since the State Auditor is required to perform semi-annual reports on the Los Angeles County's fiscal condition as well as recommendations for improving the efficiency and effectiveness of the county's operations, JLAC approved this request and, pursuant to its authority to prioritize the work of the State Auditor, determined that the audit would be performed under the terms of the semi-annual audit mandated by Chapter 518, Statutes 1995.

Background

The California Department of Health Services, Office of AIDS, collaborates with local health jurisdictions, including Los Angeles County (county), to develop and implement focused HIV prevention programs. The primary goals for these programs are to: prevent HIV transmission, change individual attitudes about HIV and risk behaviors, promote the development of risk reductions skills, and change community norms.

The Los Angeles County AIDS Office plans, develops, and coordinates HIV/AIDS-related activities within the Department of Health Services (department) through subcontracted community-based agencies, hospitals, health organizations, and through the department's inpatient and outpatient facilities. The office has an annual budget of approximately $95 million and a staff of approximately 235.

Direct services are provided by a network of hospitals, clinics, and nonprofit organizations, and various service providers under contract with the office. These services include the following:

AIDS risk reduction and prevention programs;

HIV/AIDS medical outpatient, mental health, case management, and other HIV/AIDS services;

Liaison with providers, state, federal, and private sector medicine on HIV/AIDS issues;

Strategies and implementation plan development for HIV/AIDS programs in Cooperation with the community; grants an contracts development, Administration, and monitoring; and

Collection, analysis, and release of HIV/AIDS data.

Audit Results

When allocating and spending funds for programs that address the needs of citizens living with Acquired Immune Deficiency Syndrome (AIDS), the Office of AIDS Programs and Policy (OAPP) for Los Angeles (LA) County generally follows the services priorities established by the local AIDS commission. However, the OAPP cannot ensure that it spends grant funds as the funding sources intend because it lacks an accurate time-reporting and cost-allocation system to properly charge its personnel costs to the appropriate federal or state grants. Further, the

OAPP cannot be certain that is contractors spend AIDS funds as specified by federal and state grant programs.

Established in LA County in 1985 to administer AIDS services, the OAPP uses its grant funds to foster partnerships with the community in order to change the course of the epidemic and make certain that people living with AIDS receive needed services. These services range from child care and mental health services to outpatient medical care and transportation. This audit focused on the OAPP's ability to allocate its available resources correctly and ensure that AIDS funds are spent appropriately.

In assess whether the OAPP itself spends funds as the grant sources intend, the Bureau of State Audits noted the following weaknesses in its use of funds for personnel costs:

- The OAPP spent nearly $547,000 of federal and state funds on employees who did not provide AIDS services. Five of the 40 employees reviewed worked in other departments within LA County's Department of Health Services; however, the OAPP used AIDS funds to pay the salaries of these five employees.

- The OAPP did not charge salaries for 12 additional employees to the correct grants. Instead, the OAPP charges all 12 salaries to just one AIDS program, but the employees provided services benefiting multiple AIDS programs. The OAPP inappropriately charged these costs because it does not have a proper time-reporting and cost-allocation system.

- To maximize its grant funds, the OAPP inappropriately shifted personnel costs among various state and federal AIDS grants.

- The OAPP did not meet some commitments it had made in federal applications to use funds to pay salaries for specific staff working on AIDS projects related to the respective federal programs. Because these employees performed duties not specified in the application, the employees' work may not fulfill program objectives.

Further, in evaluating the OAPP's monitoring of service contractors, the Bureau of State Audits found that it cannot ensure contractors spend AIDS funds as the funding sources intended. Specifically, the following shortcomings in the monitoring system were noted:

- The OAPP does not monitor its contracts regularly. During fiscal year 1996-97, it conducted program reviews covering only 5 percent of its contracts, and these contracts represent just $14 million of the $74 million awarded to contractors. The lack of oversight occurs because staff have many duties besides monitoring contracts, staff have insufficient training, and many positions are vacant.

- In the handful of contract reviews completed by contract monitors, OAPP findings revealed significant flaws in services rendered to individuals living with AIDS. These findings highlight the need for regular monitoring of all contracts so that the OAPP can detect and also prevent problems. For five of the six contract reviews examined, OAPP monitors noted problems with the quality or medical appropriateness of the services contractors provided.

- Although the OAPP has identified certain contracts as high-risk, it has not monitored these high-risk contracts. Typically, the OAPP identifies contractors for medical outpatient services as the first priority for review because these contractors place the county and persons with AIDS at the highest risk. For fiscal year 1996-97, the OAPP did not review any

of its 58 high-risk contracts. These contracts accounted for $16.4 million, or 22 percent, of all funds that the OAPP contracted to AIDS service providers.

Audit Recommendations

To ensure that it properly charges personnel costs of federal and state programs and that it uses funds only for AIDS services, the OAPP should do the following:

- Cease using AIDS funds to pay for services unrelated to AIDS programs, review the activities of all AIDS employees, and obtain reimbursement for funds used improperly to pay for county administrative services.

- Develop a detained time-reporting system for employees to properly report time spend on various programs. The OAPP could employ a time study to determine what percentage of time each employee spends on various programs and use this data to develop a cost-allocation plan that could be submitted to the federal government for approval. Further, the OAPP could use the cost-allocation and grant systems currently available through the county's automated reporting system.

- Discontinue improperly shifting employees between funding sources when the employees' duties do not change. Further, charge employees' time to the appropriate grants and honor all personnel commitments made in federal grant applications.

To increase its monitoring of contracts and to make sure its contractors provide appropriate AIDS services to eligible clients, the OAPP should consider implementing the following changes:

- Restructure duties to allow staff more time and verify that staff receive proper training to monitor contracts. Further, the OAPP should accelerate efforts to fill vacant management and contract monitor positions.

- Adhere to its contract monitoring plan, which identifies high-risk contracts as having the highest priority for review. Further, the OAPP should emphasize to its employees that contract monitoring is a key priority.

Agency Response

The Office of AIDS Programs and Policy concurs will all of the findings and recommendations. Further, the office is taking steps to implement the recommendations.

97116 Health and Welfare Agency: Lockheed Martin Information Management Systems Failed to Deliver and the State Poorly Managed the Statewide Automated Child Support System, March 1998

The Assembly Committee on Televising the Assembly and Information Technology including Assemblymembers Elaine Alquist, Chair, Jim Morrissey, Vice-Chair, Sheila Kuehl, Howard Wayne, and Tom Woods requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of the Statewide Automated Child Support System (SACCS). The specific concern was with the technical and financial viability of the system, the unanticipated additional cost to taxpayers, and the procedures utilized in contracting for the SACCS system.

Background

Provisions of the federal Social Security Act and the California Welfare and Institutions Code authorize state and county governments to establish a Child Support Enforcement Program. The state and federal governments have an interest in child support enforcement programs because children who do not receive financial support from non-custodial parents often end up receiving some type of public assistance funding. In California, the Child Support Enforcement Program is administered by the 58 elected District Attorneys through family support divisions in each county. The counties are responsible for locating absent parents, establishing paternity for children born out of wedlock, establishing and enforcing court orders for child support, and collecting and distributing child support payments.

Statewide automation of the child support program was made mandatory with the passage of the federal Family Support Act of 1988. While enacting sweeping new duties and performance requirements for state child support enforcement programs, Congress also recognized that compliance would be impossible without a comprehensive automated child support system. The goal of California's SACSS is to improve the quality of child support enforcement services to the public through automation, improve the efficiency and effectiveness of the child support program, and ensure compliance with federal and state child support program requirements.

The SACSS project management responsibility was originally vested with the Department of Social Services. In April 1995, the Bureau of State Audits issued a report on a similar project managed by the Department of Social Services -- the Statewide Automated Welfare System (SAWS). This audit report was critical of the Department of Social Service's management of the SAWS project and raised serious concerns about the project's viability. In May 1995, responsibility for SACSS project management, as well as SAWS and the Child Welfare Services Case Management System, was removed from the Department of Social Services and placed with the Health and Welfare Data Center by the Secretary of the Health and Welfare Agency.

Planning for SACSS began in 1989 and a contract for development of the system was awarded to Lockheed in December 1992. As an incentive to implement, successful automation projects in a timely manner, the federal government offered enhanced funding to states to cover 90 percent of the projects' costs provided the system was operational by October 1995. The federal government later extended that deadline to October 1, 1997. SACSS was originally estimated to cost approximately $142 million, of which approximately $75 million was attributable to Lockheed's contract. The estimates and the contract have been revised numerous times over the years with the latest estimate at a total of approximately $305 million, of which approximately $141 million is attributable to Lockheed's contract. At the same time,

the implementation dates were continuously delayed and it now appears that California will not meet the October 1, 1997 deadline for enhanced funding.

The SACSS has been implemented in 22 counties to date. However, the counties, the federal government, and the HWDC have serious concerns about problems with the system. One of the 22 counties implementing SACSS, San Francisco, shut down the SACSS in its county and returned to using its old system. The HWDC's Independent Verification & Validation (IV&V) contractor -- Logicon -- stated in a report dated February 28, 1997, that SACSS does not meet the quality and performance requirements for the system. Counties using the system report numerous problems with incorrect or inaccurate functions, insufficient system capacity to handle the workload, hardware, and configuration problems, and a lack of support and adequate training.

The many problems with SACSS prompted the HWDC to send Lockheed a "Notice of Material Failure to Meet Contract Obligations" in February 1997. In addition to documenting some of the more serious failures of SACSS, the letter set forth a set of conditions for continuing the project with Lockheed. According to the HWDC, Lockheed has committed to meeting those conditions and has developed a corrective action plan. The HWDC plans to assess Lockheed's progress towards meeting its corrective action plan during this and next month. In addition, the HWDC plans to evaluate all of its alternatives for meeting the State's need for automating child support enforcement programs and hopes to have a recommendation for a course of action by late June of this year.

Audit Results

In its contract with the State of California, Lockheed Martin Information Management Systems (Lockheed) promise to design, implement, and maintain the Statewide Automated Child Support System (SACSS). However, the Bureau of State Audits' review revealed that Lockheed did not fulfill its many promises to the State and failed to deliver a functional child support system. Specifically, Lockheed did not deliver the project team it had promised, developed a flawed computer system that failed testing, and did not supply many of the deliverables promised in its contract with the State. Lockheed's failure to comply with the terms of its agreement contributed to the termination of the contract and a dysfunctional computer system.

Although the Bureau of State Audits believes that Lockheed is responsible for many of the problems with SACSS, the State also contributed to the failure of SACSS because it did not take adequate action on quality assurance (QA) contractor warnings and mismanaged the administration of the project, thereby wasting millions of taxpayer dollars. From the planning to the installation phases of the project, the State made poor management decisions despite paying QA contractors $3 million for independent, impartial assessments of the project's methods, techniques, deliverables, and progress throughout the life of SACSS. Even though the contractors repeatedly warned the State about significant deficiencies in the project staffing and the system developed by Lockheed, the Department of Social Services (Social Services) and the Health and Welfare Agency Data Center (data center) failed to correct the problems and continues their efforts to install SACSS. Further, Social Services and the data center inappropriately increased the prices paid to Lockheed under the contract by more than $14 million. They also made inappropriate payments on the SACSS project in excess of $27 million, including payments for incomplete and inadequate deliverables.

The failure of SACSS cost taxpayers for than $111 million, and the State will pay up to another $11 million for Lockheed to maintain SACSS for those counties currently using the system.

Additionally, Social Services estimates that the State now faces as much as $144 million over the next four years in potential federal penalties. The State also faces the challenge of beginning the project all over again while many children wait for child support payments from absent parents whom counties are unable to locate without help from a statewide automated system. In addition, recent welfare reforms increase the importance of improving child support collections because aid to families is limited under new laws.

A "Cascade of Events" Contributed to the System's Failure

SACSS did not fail as the result of one defect; rather, it was an accumulation of problems that caused the project to fail. When the airline industry investigates an accident involving a commercial airliner, it refers to the series of events that led to the accident as the "cascade of events." The cascade of events helps explain how a series of unrelated events or decisions formed a unique set of circumstances that led to the accident or failure. Similarly, the Bureau of State Audits has examined the cascade of events that ultimately contributed to the failure of SACSS. The following is a summary of some of the more significant events that the Bureau of State Audits believes contributed to the project's failure:

- **The federal government required states to transfer existing child support systems from other states or counties rather than build entirely new systems.** However, only a few available systems met the federal government's requirements and were suitable for transfer to other states. As a result, California, like many other states, attempted to transfer incomplete and incompatible systems, an effort that added costs and delays to the project. The federal government eventually recognized the obstacles associated with transfer systems and in July 1994, eliminated it as a requirement. Unfortunately, the federal government's realization of the problems with transfer systems came too late for SACSS.

- **The federal government took five years to provide states with final requirements for the system.** Because the federal government did not provide states final system requirements until June 1993 (one year after the award of the contract to Lockheed), states were under tremendous pressure to develop and implement a very complex system within a compressed time frame; the original deadline being October 1, 1995. California's size, diversity, and organizations structure for child support enforcement made this challenge even greater than for other states.

- **The federal government's mandated deadline for completing the project negatively influenced the State's decisions.** Automation projects normally are driven by a need or a desire to improve upon an existing system and to support improved processes. In the case of child support enforcement, the United States Congress mandated automation as a means to improve states' child support enforcement systems and to increase child support collections. As a part of that mandated, Congress set the deadline at October 1, 1995, later extended it to October 1, 1997, and established sever financial penalties for states failing to comply with the mandate. The focus on meeting the federal deadlines significantly influenced many of the State's decisions regarding SACSS. For example, although the system failed user acceptance testing, the State installed the defective system in counties in its efforts to meet the federal deadline.

- **Lockheed did not provide the project team it proposed.** Throughout the life of the project, the State's QA contractors raised concerns about the quality and number of Lockheed's staff, which experienced a high turnover rate that adversely affected the project.

Moreover, according to the staff lists provided by Lockheed, only 10 of the 87 staff specifically named in the proposal actually worked on the project.

- **Lockheed developed a flawed system design.** The general and detailed system design documents, the "blueprints" for SACSS, contained numerous identified flaws and deviations from system requirements. These problems were documented by Social Services and its QA contractor and acknowledged in writing by Lockheed early in the project. However, despite the fact that these issues were identified, documented, and discussed as far back as 1993, many of these problems remain unresolved today.

- **Lockheed failed to test SACSS adequately.** In May 1995, the QA contractor criticized the system testing performed by Lockheed, and raised concern about the ability of SACSS to perform within established parameters. Rather than requiring Lockheed to fix the problems, Social Services had Lockheed verify during the next phase of the project that the system met the State's requirements. However, this revised approach did not ensure that the system would function according to design.

- **Expanding scope of the project.** With the approval and encouragement of the federal government, the State expanded the scope of the SACSS project beyond the minimum requirements established by Congress. As SACSS was being developed, the State further increased the scope of the project to accommodate the diversity of the counties. Moreover, changes in state laws added new requirements for the system. The expansion and changes in the scope adversely affected the project by increasing its complexity thereby adding to the risk of failure.

- **State did not adequately resolve problems.** The State paid its QA contractors $3 million to help oversee Lockheed's work and to ensure the State was getting what it paid for. However, despite the contractors' repeated warnings of deficiencies with Lockheed's staffing, development practices, testing procedures, and with the system, Social Services and the data center failed to take adequate action and continued their efforts to install SACSS.

- **State mismanaged the SACSS project and wasted millions of taxpayer dollars.** As administrators of the SACSS project, both Social Services and the data center made numerous management decisions that contributed to the failure of SACSS and cost the taxpayers millions of dollars. From the planning through the installation phases of the project, the State made poor management decisions. For example, the State paid Lockheed for incomplete contract deliverables, and inappropriately increased contract prices paid to Lockheed by over $14 million. Additionally, the State failed to monitor and control total costs of the SACSS project and did not establish adequate internal controls over the accounting processes. Finally, the State did not establish satisfactory contract penalty and risk-sharing provisions and poorly negotiated contract amendments.

Audit Recommendations

To avoid a repetition of the Statewide Automated Child Support System's (SACSS) failure, the Health and Welfare Agency should do the following:

- Create a governance council led by county district attorneys and state representatives to oversee future child support enforcement automation efforts.

- Ask California's congressional delegation to pursue changes in federal laws governing child support enforcement automation efforts.

- Provide high-level support for the project and create incentives for the counties to develop solutions for the State's child support enforcement automation needs.

- Improve the policies and procedures at the Health and Welfare Agency Data Center and the Department of Social Services that have allowed inappropriate, unjustified payments and contract amendments to go undetected.

- Ensure that the entity selected by the governance council to manage any future child support enforcement automation efforts learns from the lessons of the first SACSS project and utilizes good project management techniques.

In addition, the Legislature should memorialize Congress to amend federal laws governing child support enforcement automation efforts.

Agency Response

The Health and Welfare Agency (State) generally agrees with the recommendations and with many of the audit findings regarding warning signs and project management issues. However, the State disagrees that its management decisions contributed to the failure of the project and that it allowed the counties to purchase personal computers and printers prematurely.

97118.1 Department of Corporations: To Optimize Health Plan Regulation, This Function Should Be Moved to the Health and Welfare Agency, May 1998

Assemblymember Susan Davis requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of the Department of Corporations (DOC) administration and enforcement of Health Care Service Plan Law. The specific concern involves DOC's ability to adequately oversee California health maintenance organizations.

Background

The Knox-Keene Health Care Service Plan Act of 1975 (California Health and Safety Code Sections 1349, et. Seq.) created a comprehensive set of requirements for health care service plans (health plans), also known as health maintenance organizations or HMOs. The purpose of the act is to promote the delivery of health and medical care to the people of California who enroll in or subscribe for services rendered by a full-service health plan or a specialized health plan. A full-service health plan provides a full range of medical services; a specialized health plan provides specific services, such as vision care, dental care, or mental health care.

The act assigned the responsibility for regulating and licensing health plans to the commissioner of corporations of the DOC. To ensure that health plans provide quality medical care, the DOC performs various activities including on-site medical surveys and assisting members in resolving complaints against their health plans. According to the DOC, there are 108 active health plans licensed in California as of March 31, 1997.

The 1997-98 proposed budget for the Health Care Program is $8.9 million, including $3.2 million in estimated salaries and wages for 63 employees in three field offices (Sacramento, San Francisco, and Los Angeles).

Audit Results

Because both the health care industry and laws governing the industry are undergoing significant changes, the State should place regulatory responsibility for health care service plans (health plans) in a setting where health care is a primary focus. Although health plans have grown in number and complexity in the two decades since the State developed its regulatory structure for health plans, California continues to locate the responsibility for overseeing these plans in the Business, Transportation and Housing Agency (agency), which has business and transportation rather than health care as its primary focus. Currently, the Health Plan Division (division), which is part of the agency's Department of Corporations (Corporations), oversees more than 100 health plans. Further, since the 1970s, legislative changes have expanded Corporations' oversight of health plan operations by adding more stringent requirements to address the quality and delivery of care provided to health plan enrollees. Nonetheless, health care issues hold a minority interest for both the agency and Corporations, whose cardinal responsibilities include regulating certain investments and financial lenders.

During this review, the Bureau of State Audits analyzed the skills, expertise, and focus of the Department of Consumer Affairs, the Department of Health Services, and the Department of Insurance; but did not attempt to ascertain the efficiency and effectiveness of operations at these departments nor at Corporations. All three departments perform, to varying degrees, the types of functions necessary to regulate health plans; however, of the three, the Department of

Health Services, within the Health and Welfare Agency, offers the most suitable environment. Additionally, it was noted that the State also has the option of creating an entirely new entity that would perform the required regulatory functions.

Regardless of whether the State moves the division to an existing department or creates a new entity, this review concludes that the regulation of health plans belongs with the Health and Welfare Agency. In locating health plan oversight in this agency, the State can capitalize on the agency's expertise and its focus on health care matters.

Audit Recommendations

To optimize the regulation of health plans, the Legislature should move the Health Plan Division, currently part of the Department of Corporations within the Business, Transportation and Housing Agency, to the Health and Welfare Agency. Further, if the Legislature decides to place the regulatory responsibility for health plans in an existing department, the Legislature should consider the Department of Health Services which has regulatory functions that are most similar in skills and focus to those of the Health Plan Division and has an overall health care related mission.

Agency Response

The Business, Transportation and Housing Agency disagrees with the conclusions and recommendations except as they relate to the Department of Consumer Affairs and the Department of Insurance. Instead, it believes that the responsibility for regulating health plans should be assigned to a new department within the Business, Transportation and Housing Agency.

Similarly, the Health and Welfare Agency disagrees with our recommendation that to place health plan regulation within that agency, citing a potential conflict of interest and concern that ensuring the solvency of health plans is not directly related to its core objectives.

Finally, the Department of Health Services expresses concern that it may have a conflict of interest, and cites the governor's proposal that a new department be established to oversee managed care.

97119 Los Angeles County: Millions Spent on Courthouse Projects That May Never Be Built, July 1998

Assemblymember George Runner requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of courthouse construction activities in Los Angeles County. The specific concern was over allegations of misuse of public funds and inefficiency that may be adversely affecting efforts to build new courtrooms in Los Angeles County and in Antelope Valley in particular.

Background

Existing law establishes a Courthouse Construction Fund in Los Angeles County and provides that court construction in Los Angeles County must be completed in a priority established in statute. Specifically, Government Code, Section 76219, establishes the Robbins Courthouse Construction Fund. This section, which was enacted in 1991, specifies a priority for any monies expended in other areas. The priorities established by this code section require the funds to be spend within certain geographical areas of Los Angeles County before they can be expended in other areas. For example, the first $43 million are required to be spent within the San Fernando Valley before any funds are expended in other areas. This code section defines three distinct tiers of geographic areas and corresponding dollar amounts that must be spent on the first two tiers before any funds can be expended on the third tier. Antelope Valley is one of the communities in Los Angeles County that are a part of the third tier.

Audit Results

Since 1988, Los Angeles County (county) has spent $79 million on eight incomplete courthouse construction projects financed through its Robbins Courthouse Construction Fund. Five of these courthouse projects have scant change of being built, yet the county spent $18.6 million on them -- $9.9 million for planning and design, money from which it will derive no benefit, and $8.7 million for land that now sits idle.

Following approval of its master courthouse construction program in 1988, the county started eight courthouse projects. However, it predicated its ambitious program on revenue projections that, because of subsequent changes in law, proved to be overly optimistic and cost projections that were too low. In addition, the county failed to perform comparative needs assessments and did not prioritize the courthouse projects to determine where construction funds could be most effectively spent.

To compound these problems, the courthouse projects have been plagued by significant delays. Some of these delays, such as those caused by the Northridge earthquake and relocation of one courthouse, were out of the control of the county. Other delays have resulted from the county's poor control of the projects.

Three years into the program, an outside consultant warned the county that it could not finance the entire courthouse construction program, but the county continued to purchase land and develop land for all eight projects. The county was finally forced to defer six projects in 1994 due to insufficient funding. Had the county reacted promptly to the consultant's warning, it could have prevented spending as much as $7.8 million of the $9.9 million it spent on planning and designing projects it eventually deferred, and $8.6 million on unnecessary land purchases.

Until revenues increased recently, the county lacked sufficient funding to complete any of the projects it deferred. However, the county now projects that if the current revenue levels continue, it will have sufficient funding to complete one of the deferred projects – the Antelope Valley courthouse. Nevertheless, the county must proceed with caution. These revenues are subject to sudden changes, and even small decreases in revenues or increases in costs could jeopardize the county's ability to fund the project. Unfortunately, the county has not identified the factors that account for the recent increases in revenue. Thus it has no assurance its projections are based on realistic assumptions. As a result, the county risks repeating its past by mistakes by spending money on projects it cannot complete.

Nonetheless, the county has taken steps to improve its project development process. In 1995, the county reorganized some duties and in 1997 it adopted a capital projects management process. Although these actions appear to address its main problems, changes are too recent to evaluate in practice.

Audit Recommendations

To ensure it maximizes scarce resources for courthouse construction, the county should conduct a countywide comparative needs assessment and continue projects based on the greatest need.

To ensure project funding is realistic, the county should monitor factors that will affect revenues or cots, revise cash flow projections, and recommend changes to the courthouse construction program whenever warranted.

Agency Response

The county generally agreed with the recommendations and provided additional comments.

97121 Department of Mental Health: Changes in State Hospital Security Measures Can Reduce Annual Costs While Maintaining Public Safety, March 1998

Assemblymember Bill Leonard requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit of patient and facility security measures at California Department of Mental Health (DMH) hospitals. Specific concern involved security procedures at the four DMH facilities, in particular, as they related to patients housed under penal code provisions.

Background

The DMH operates the Atascadero, Metropolitan, Napa, and Patton State Hospitals. These hospitals provide inpatient services for mentally disabled patients, including mentally disordered offenders who are incompetent to stand trial, offenders found not guilty by reason of insanity, inmates transferred from the California Department of Corrections (CDC), wards transferred from the Youth Authority, and convicted felons classified as "sexually violent predators." Those committed as forensic patients at the hospitals has grown in recent years. For example, at the end of fiscal year 1990-91, 2,240 (48 percent) of the four hospitals total population of 4,687 were classified as forensic patients. The Governor's Budget projects that the population of forensic patients will grow to 3,023 (74 percent) of the four hospitals total population of 4,093 at the end of fiscal year 1997-98.

One of the factors contributing to the growth in the forensic population is AB 888 (Chapter 763, Statutes of 1995), dealing with sexually violent predators. This statute commits to a state mental hospital individuals who have previously been convicted of specified sex offenses and have a diagnosed mental disorder that makes it likely they will engage in sexually violent criminal behavior upon release from the CDC. Rather than being released from the CDC, the sexually violent predators are committed to a state mental hospital for treatment. There are other factors that are causing an increase in the forensic population as well. In response to this change in patient populations, the DMH has been upgrading its measures by adding perimeter fencing and security cameras. Patton Hospital is the only one of the four hospitals to utilize CDC officers to secure the perimeter of the hospital grounds.

Audit Results

The Department of Mental Health (department) operates four hospitals for mentally disabled patients. This audit focused on the security measures used to prevent forensic patients at these hospitals from adversely affecting the safety of the staff, other patients, and the public (forensic patients have either been convicted of a crime or found incompetent to stand trial). During the review of the security measures at the four hospitals, the following areas were found where security costs could be reduced:

- The perimeter security at Napa and Patton hospitals could be operated more cost-effectively by using enhances security measures such as double-fencing, redundant electronic detection systems, and dedicated patrols.
- Additional savings could result at Patton hospital if the department took over the perimeter security function currently provided by the Department of Corrections.

During the audit, the following security issues were identified:

- Internal security procedures and practices should be standardized.

- Staff at some hospitals are complacent toward security policies and needs.

- Qualifications and training for hospital police officers need to be upgraded.

- In limited situations, hospital police officers should be armed.

Finally, the department's estimates for forensic population growth were reviewed, and found that after June 2003, patient population growth will exceed the number of available beds. In addition, because the department's security risk-assessment process is based on excessively narrow criteria, patients are considered high-security risks solely based on their history of prior escape. Moreover, some patients may be considered low- or medium-security risks even when their behavior may suggest that they represent a threat to the community.

Audit Recommendations

To increase the cost-effectiveness of its perimeter security operations, and to reduce the State's annual security costs by approximately $7.4 million, the Department of Mental Health (department) should:

- Complete the detailed planning, design, and construction of an enhanced double-fence security system at Napa and Patton hospitals, including redundant electronic detection systems.

- Upon completion of the Napa and Patton fence projects, initiate mobile internal and external patrols, thereby permitting reductions in staffing. All patrol units should be equipped with portable alarm receivers for immediate notification when the fence sensors are activated.

- Eliminate two of the four guard posts at Metropolitan hospital.

- Install additional perimeter fencing with disturbance sensors at the front of Atascadero hospital and on roof lines of the administration building.

To increase the overall internal security at each hospital and to reduce staff complacency toward internal security maters, the department should:

- Implement a plan to improve the internal physical security at all hospitals. The plan should survey all buildings to identify the specific needs, including glass and window spaces, fences and courtyards, exterior door alarms, personal alarm systems, portable metal-detection equipment, and alarm systems for courtyards.

- Centralize fundamental physical security decisions for all hospitals.

- Improve the standardization of important operating practices, especially daily patient counts, key control, locking and alarming doors, and patient transportation.

- Conduct periodic unannounced audits of internal and perimeter security. Such audits could be conducted by staff from headquarters and other hospitals as a form of training and peer review.

To protect staff and the public potential assaults by patients, the department should seek legislative change to make certain patient acts a felony. Specifically, any forensic patient who escapes or assaults staff should be charged with a felony.

To increase the overall qualifications, training, and effectiveness of its hospital police officers (HPOs), the department should require all new HPOs to complete the same level of certified training that Napa and Metropolitan HPOs receive. In addition, to protect patients and officers, officers who transport patients off-grounds should be armed. The department should ensure that all armed officers are fully trained and screened.

To improve overall coordination and control of security at its hospitals, the department should centralize coordination and control of hospital security.

Finally, to meet the expected shortage of hospital beds in June 2003, the department should plan facilities with more beds. In addition, to allow the greatest flexibility to treat and house its growing population of forensic patients, the department should revise its security risk-assessment process and request that the Legislature remove the current law that restricts admitting forensic patients directly to Napa.

Agency Response

The Department of Mental Health generally agreed with the recommendations and indicates that it will review the findings with local legislators, law enforcement agencies, concerned community groups, and others to determine the course of action it will take.

Audit Reports that were authorized and released in 1998

97101 Los Angeles Community College District, December 1998

Senator Richard Polanco requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct a performance audit of Los Angeles Community College District (district). Senator Polanco was concerned about district budget shortfalls and the equity of district resource allocation practices.

Background

The district, consisting of nine campuses in the Los Angeles area, is the largest community college system in the United States. The colleges offer a wide variety of Associate of Arts and Science degrees as well as a multitude of Occupational Certificate programs. Semester enrollment for the nine colleges exceeds 100,000 students.

The district is governed by a locally elected Board of Trustees (board). The board consists of seven members from the local community and one student member. Community college district boards are typically responsible for carrying out the decisions and policies set by the board.

Audit Results

The Los Angeles Community College District (district), composed of nine colleges and a district office that provide educational services to approximately 100,000 students, is the largest in the state. In December 1997, its independent financial auditors warned that the district might not remain financially viable. Moreover, the Accrediting Commission for Community and Junior Colleges expressed extreme alarm in January 1998 about this opinion and cited specific concerns about district-level planning, budgeting, administrative stability, and fiscal health.

The Bureau of State Audits review focused on the causes of the district's fiscal and budgetary difficulties and how the district plans to address them. The BSA found that costly policies and poor management have contributed significantly to the district's poor fiscal condition. For example, the board agreed to salary increases for district employees and allowed excessive overtime for campus police officers, which significantly increased costs. In addition, ineffective budgeting practices and lack of accountability have prevented the district from promptly reacting to its fiscal problems and have resulted in overspending and depletion of district reserves. The district's ability to effectively deal with its fiscal problems has been hampered by its lack of cohesive long-range planning, the terms of agreements the board has negotiated with employee unions, and state requirements for the use of full-time faculty. As a result, the district continues to face financial uncertainty.

Many college facilities are run down and in need of repair. While the BSA did not find conditions that raise serious and immediate safety concerns, it is believed that the poor condition of the facilities is severe enough to affect students' decisions to attend the colleges. The lack of funding at the state and local level hampers needed repairs, improvements, and ongoing maintenance.

Finally, the district is undergoing reforms, a primary feature of which is a decentralization process to vest more decision-making authority with the college presidents. While the district initiated these reforms in response to its fiscal problems, plans to date have not adequately

addressed the costly decisions and poor budgeting practices that historically contributed to these problems. Additionally, the decision to decentralize creates a new set of challenges that the district must address amidst its current fiscal difficulties. For example, the district will need to clarify roles and responsibilities and articulate the new system of internal controls it envisions.

Audit Recommendations

To improve its decision making and guide its reform efforts, the district needs to develop a comprehensive vision for the future that clearly spells out the roles of the board, the district office, and college administrators. This vision should include goals and objectives for the district and the individual colleges that are linked into a consistent, cohesive framework against which all parties can evaluate the merits of proposed management decisions.

To avoid overspending and further eroding its fiscal condition, the district should enforce budgetary and spending controls, including the following:

- Require that colleges base their budgets on realistic estimates of planned activities justified in light of historical expenditures and detailed plans for more efficient use of resources.

- Ensure that appropriate administrators at each college are held accountable for developing and adhering to approved budgets.

- Deny payments if colleges attempt to spend beyond their budgets.

- Ensure that funds are available to cover any increased costs and that terms are consistent with the need to maintain administrative flexibility when negotiating new agreements with its employees.

- Ensure that appropriate action is promptly taken on anticipated budget shortfalls.

To improve the condition of its facilities, the district should consider using savings it achieves in other areas to fund maintenance projects and continue to request funding from the State for needed projects.

The district's efforts to decentralize should include the following:

- Making the presidents' responsibilities commensurate with their authority.

- Ensuring the district can continue to meet its districtwide obligations, statutory or otherwise.

- Determining how it will ensure that the good of the district as a whole prevails in an environment of potentially increased competition among the individual colleges.

Finally, the district should ensure that its decisions on reform result in efficient administration, and cost savings, while preserving basic educational services.

Agency Response

The district agrees with the recommendations and believes it can make improvements in a number of areas the report identifies. It is addressing its fiscal issues and expects to end the current fiscal year with an adequate balance in its unrestricted general fund.

97123 Lahontan Regional Water Quality Control Board Has Not Accomplished All of Its Regulatory Work and Has Not Always Vigorously Acted Against Water Quality Violators, November 1998

Assemblymember Rico Oller requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct a comprehensive performance audit of the Lahontan Regional Water Quality Control Board (LRWQCB). Specifically, Assemblymember Oller was concerned about the LRWQCB's ability to adequately manage and follow through on certain projects in the Lake Tahoe region as well as its ability to work effectively with other agencies.

Background

California Water Code, Section 13200, established the LRWQCB as one of the nine State Water Resources Control Board (SWRCB) regions. The Lahontan region comprises basins in the eastern part of the State from the Oregon border to parts of Los Angeles and San Bernardino counties. The LRWQCB has offices in South Lake Tahoe and Victorville.

The overall mission of the SWRCB is to preserve and enhance the quality of California's water resources and ensure their proper allocation and efficient use for the benefit of present and future generations. The regional boards are to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the State's water, recognizing local differences in climate, topography, geology, and hydrology. They oversee the operations of public utility agencies that supply water within their region. Water Code, Article 3, specifies how the regional boards are to plan and carry out programs to fulfill its mission.

Assemblymember Oller believes that in certain instances the LRWQCB has not fulfilled its obligations to the public because it has not appropriately projects and/or has neglected to follow through on projects in the Lake Tahoe Region.

Audit Results

Lahontan Regional Water Quality Control Board (Lahontan) is responsible for protecting water quality within its region. However, the Bureau of State Audits' review revealed that Lahontan is not fulfilling all of its regulatory responsibilities. Particularly for dischargers that pose the highest threat to water quality, Lahontan does not always update permits promptly, complete compliance inspections, or ensure that dischargers submitted self-monitoring reports. Although Lahontan develops work plans to manage its workload for the coming year, these plans do not always target or outline actions that enable Lahontan to measure its progress toward completing its workload. Lahontan believes that it does not receive sufficient resources to complete all regulatory responsibilities; however, it does not always focus its limited resources on those dischargers that present the highest threats to the region's water quality.

Also, Lahontan has not consistently ensured prompt resolution to water quality violations. For example, Lahontan did not always followed up on permit violations, did not take informal enforcement actions when violations occurred, and did not take formal enforcement actions promptly to deter or reduce future violations. In addition, Lahontan did not always escalate enforcement actions when dischargers failed to comply with initial actions. Lahontan stated that in the past, it followed a cooperative approach with violating dischargers because formal enforcement actions took substantial staff time to prepare. However, Lahontan has recently shifted emphasis towards more vigorous and prompt enforcement.

Moreover, although the State Water Resources Control Board (state board) is responsible for providing statewide oversight and administration of water quality planning and regulatory functions, it needs to more effectively monitor the regional boards. Specifically, the state board did not ensure that Lahontan developed its work plans when required, tracked and monitored data for work-plan goals, and focus work-plan goals on the highest threats to water quality. The sate board also relied on flawed data to measure Lahontan's progress. Further, the state board could do more to ensure that all regional boards consistently address water quality violations.

Audit Recommendations

To better ensure that it addresses work that represents the highest threat to the region's water quality, Lahontan should take the following steps:

- For each of its programs, prepare work plans that encompass its key regulatory responsibilities, such as updating permits, conducting compliance inspections, and reviewing monitoring reports. These work plans should target those dischargers or sources of pollution that present the highest risk of pollution to the region's waters, They should take into account funding constraints, rely on accurate workload data, and accomplish measurable goals.

- Monitor the performance of its program managers and water quality staff against the goals set forth in the work plans.

To better ensure the consistent enforcement of the state's water quality laws, Lahontan should adhere to those key provisions of the statewide enforcement policy that call for continuous follow-up on enforcement actions to ensure their success. Also, when dischargers do not cooperate with its initial enforcement efforts, Lahontan should escalate enforcement actions promptly.

The state board should ensure it directs and adequately monitors the performance of the regional boards. It should evaluate the goals set in their work plans and determine whether the regional boards develop the goals based on reasonable workload standards.

To assist the regional boards in achieving a higher degree of consistency in their enforcement actions, the state board should do the following:

- Continue its efforts to develop a statewide database of ongoing and past enforcement actions that regional board staff can access when considering the proper course of action in a pending case.

- Routinely review a sample of enforcement actions from all nine regional boards, to determine whether the boards consistently adhere to the statewide enforcement policy.

Agency Response

The California Environmental Protection Agency, the State Water Resources Control Board, and the Lahontan Regional Water Quality Control Board generally agree with the recommendations and audit findings.

97124 Cajon Valley Union School District: The District Needs to Improve Its Managerial Oversight and Accountability, August 1998

Senator Steve Peace and Assemblymember Steve Baldwin requested the Joint Legislative Audit Committee to direct the Bureau of State Audits to conduct an operational, fiscal and administrative audit of the Cajon Valley Union School District based on issues raised by their constituents.

Background

Cajon Valley Union School District (district) is located in San Diego county and serves more than 16,000 students in 21 elementary schools, five middle schools, and one special education center. District oversight is provided by a five-member governing board. The district received approximately $63 million in state funding for the 1996-97 fiscal year.

Audit Results

The Cajon Valley Union School District (district) is located primarily within the city of El Cajon, east of metropolitan San Diego. Governed by a five-member board of trustees (board) and administered by a superintendent and assistant superintendents and directors, the district serves approximately 19,200 students.

The Bureau of State Audits reviewed the district's administrative activities and examined specific concerns raised by members of the board and the community. They found that the district failed to develop adequate procedures in some areas and did not always follow its own policies or state or county guidelines in others.

For example, the district's inventory system does not adequately track its investment in equipment and other personal property. Although it has verified the location of items totaling $12.6 million, as of July 1, 1998, the district had not accounted for 553 items, representing $414,600. The district's process of physically counting equipment and maintaining records does not adequately account for and thereby safeguard its assets. Further, adding to the vulnerability of equipment to loss or theft, the district does not ensure that contractors return keys loaned to allow off-hours access to school buildings and grounds. District staff accounted for 61 of 77 keys loaned to contractors for off-hours access only after the inquiry, but they could not account for the remaining 16 keys.

In addition, although a total of $5,200 in cash was lost due to thefts from its headquarters in 1995 and 1996, the district has not established a process for employees to report actual or suspected theft or other illegal activities.

Further, the district does not always follow its own policies or state or county guidelines for procuring goods and services. In one instance, district staff executed a contract for building inspection services and paid the contractor more than $107,000 when the board had authorized only $7,000. Also, the district does not always seek competing proposals as state law and its own policies require. In addition, it has allowed contractors to begin work prior to obtaining a written agreement with the contractor or before obtaining formal approval from the state agency that funds school projects. Furthermore, the district has not fully implemented

recommendations from the San Diego County Office of Education that would improve its annual audit, daily operations, and compliance with state procurement laws.

Audit Recommendations

To improve its administration, the district should take the following steps:

- Immediately perform a physical inventory at all sites, write complete instructions to site staff who perform the inventories, and reconcile the results of the physical inventory to identify the appropriate location of equipment and determine whether any is missing. The district should also follow up on items reported missing during inventory and investigate the causes and remedies of lost or stolen items, or inaccurate records.

- Ensure that all keys loaned to contractors are returned as soon as projects are completed.

- Establish and maintain and official record of its investment in fixed assets.

- Develop and implement the procedures necessary to execute contracts as authorized by the board and obtain board approval for any contract amendments.

- Seek competing proposals and ensure that contractors do not begin work before contracts are approved as required by the California Public Contract Code.

- Complete its revision of the Board Policies and Administrative Regulation Manual as recommended by independent studies.

Agency Response

The district generally concurs with recommendations to improve their efficiency and accountability, and in some cases has already implemented additional processes to address them. However, the district does not agree with some of the perspective and recommendations made regarding its procurement of goods or services, including professional services.

97125 California Department of Corrections: The Cost of Incarcerating Inmates in State-Run Prisons Is Higher than the Department's Published Cost, September 1998

Senator Polanco requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an in-depth audit to determine the actual annual cost to the State for incarcerating inmates under the jurisdiction of the Department of Corrections. Specifically, Senator Polanco wanted to ensure tat all costs of incarceration, including those that are not typically attributed to inmates, are considered when comparing current costs with cost proposals for privatized prisons.

Background

The Department of Corporations, established by the California Penal Code, section 5000, is responsible for the incarceration, training, education, treatment, and care of male and female felons and nonfelon narcotics addicts. The inmate population is approximately 156,000, consisting of 93 percent male and 7 percent female inmates. By the year 2002, the inmate population is expected to increase to over 204,000, according to the Legislative Analyst's Office.

The State owns 33 state prisons, ranging from minimum to maximum custody; 38 camps, minimum custody facilities in wilderness areas where inmates are trained as wildland firefighters; and 6 prisoner mother facilities. The Department of Corrections calculates that it costs the State an average of $21,470 per year for incarcerating an inmate. This amount includes security, health care, facilities, food and clothing, records and counseling, academic, vocational and work programs, reception and diagnosis, and leisure and religion programs.

According to Senator Polanco, the Legislature is contemplating the issue of privatizing prisons. In order to determine whether privatization is cost-effective, actual annual cost per-inmate needs to be available to compare with what private vendors are offering. Recent national reports indicate that typical incarceration cost figures do not include all cost factors. Those additional costs include a variety of items such as debt services, general liability, external administrative overhead, health care, or other costs of services provided by other agencies.

Audit Results

The California Department of Corrections (department) was established in 1944 and is responsible for incarcerating criminals. Its operation includes work, academic education, vocational training, and medical, dental and psychiatric care for California's approximately 146,000 inmates, as well as parole services, such as supervision and surveillance.

Each fiscal year, the department calculates and publishes the amount of incarceration costs per inmate. The department's calculation focuses primarily on those operating costs directly related to housing and supporting inmates, such as food, clothing, health care, and inmate activities. For fiscal year 1996-97, the department calculated annual incarceration costs at $21,012 per inmate.

The Bureau of State Audits reviewed the department's calculation and found that, although it appropriately reflects many of the operating costs, it does not include all costs by the state. When all of the costs were included, the annual incarceration costs were found to be $24,807 per inmate for fiscal year 1996-97, $3,794 higher per inmate than the department's published

figure. The total difference of costs to incarcerate inmates between the department's calculation and the Bureau of State Audits' estimate is $517 million.

The primary reason for this difference is the department's calculation does not include capital costs, such as lease-purchase payments, debt-service costs for new construction, and costs of improving and renovating existing prisons. The department's calculation also does not include reimbursements to local governments for transportation costs, court fees, and county charges related to state inmates. Finally, the department's calculation does not include its share of state central-service costs, such as costs of various accounting functions performed by the State Controller's Office for other state departments.

The Bureau of State Audits calculated the annual incarceration costs per inmate for each of the 32 state-run prisons operating during fiscal year 1996-97, as well as a statewide cost per inmate. This calculation includes all operating and capital costs. Annual incarceration costs per inmate were found to vary significantly from one prison to another, depending on each prison's security levels, facility types and age. Annual costs per inmate for the 32 prisons ranged from $18,562 to $38,554 per year.

Audit Recommendations

To accurately determine the relevant cost of prison operations, the department should include all operating and capital costs in its calculation of how much the State pays annually to incarcerate criminals.

Agency Response

The Department of Corrections generally agrees with the findings and the recommendation that all operating and capital costs should be included in its calculation of annual incarceration costs.

97127 Marks-Roos Bond Act Borrowings: Several Cities Misused the Program and Some Financed Risky Projects Which May Result in Investor Losses, September 1998

Assemblymember Scott Wildman, Chair of the Joint Legislative Audit Committee, requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit of bond proceed accounts for a variety of local governmental entities. Specifically, Assemblymember Wildman is concerned about allegations of irregularities in accounting for bond proceeds, as well as potentially missing funds related to bonds issued under the Marks-Roos Local Bond Pooling Act of 1985 for certain cities and school districts.

Background

The purpose of the marks-Roos Local Bond Pooling Act of 1985, California Government Code, Section 6584 et seq., is to assist local agencies in financing public capital improvements. Local agencies may sell bonds through an authority created under the act to finance public capital facilities necessary to support the rehabilitation and construction of residential and economic development. Typically, several accounts are created to track the bond proceeds and repayments.

The California Debt and Investment Advisory Commission (CDIAC) was established by the California Government Code, Section 8855. Among the purposes of CDIAC are to assist state or local governments to effectively and efficiently issue, monitor, and manage public debt; collect, maintain, and provide information on local debt authorized, sold, and outstanding; provide education and oversight to help local governments safely and effectively invest public funds; and serve as a statistical center for all state and local debt issues. CDIAC is a nine-member board including the state treasurer, the governor, the director of finance, the state controller, and two local government finance officers appointed by the state treasurer. Two members of the Assembly and two members of the Senate serve as advisory members to CDIAC.

According to Assemblymember Wildman, the CDIAC has received numerous reports of improper accounting and potentially missing moneys for bonds issued under the Marks-Roos Local Bond Pooling Act of 1985, as well as reports of attempts to cover up the irregularities.

Audit Results

The Legislature created the Marks-Roos Local Bond Pooling Act (act) in 1985 as a flexible tool for local agencies to finance needed capital improvements or other projects benefiting the public. However, many cities have used their authority under the act inappropriately. Waterford and San Joaquin established public financing authorities (PFAs) and issued bonds to finance highly speculative projects throughout the State that do not directly benefit their cities. In exchange for financing the projects, the cities received a portion of the bond proceeds for costs unrelated to administering the bonds or to the financed projects. Together, these cities received $1.3 million in fees for issuing $148.9 million in Marks-Roos bonds.

In addition, the two cities did not adequately control the projects. As a result, both financed projects that do not have proper permits or approvals, and one paid too much to require some assets. For example, the Bureau of State Audits estimates that, because it relied on a deficient appraisal report commissioned by the seller, one of San Joaquin's PFAs may have paid up to

$9,2 million too much for land it purchased. Furthermore, because this property's use is currently limited under the California Land Conservation Act, the PFA may not be able to fully develop it until January 1, 2008. The delay or potential failure to fully develop this land is likely to cause the PFA to default on $23 million of its debt.

Further, the cities, or other members of the PFAs did not adequately perform administrative duties, such as monitoring project progress, reviewing project cots, maintaining accounting records, and obtaining financial audits. This lack of control resulted in one PFA reimbursing a developer for a $100,000 loan to a political organization and paying twice for services costing $27,000.

More alarmingly, many projects have not generated revenues sufficient to pay the principal and interest due to investors, nor are they likely to do so in the near future. If PFAs are unable to raise the money to make required bond payments, they will default on the bonds. Despite the risk of default, the cities' PFAs continue to finance highly speculative projects.

The Bureau of State Audits also noted less severe yet still questionable uses of the act in the cities of Lake Elsinor, Coalinga, and Oroville. The Lake Elsinore PFA paid up to $1 million in duplicate bond insurance costs. The Coalinga PFA financed a golf course over 100 miles away in Merced in return for a fee of $345,000. Oroville transferred over $200,000 of interest earned on Marks-Roos bond proceeds to its general fund. Additionally, although the cites of Avenal, Dos Palos, Selma, and Wasco did not appear to abuse their Marks-Roos authority, they exposed investors to increased risks by financing projects outside of their jurisdicitons. Finally, based on their responses to the survey of 12 cities reviewed, the cities of Atwater, Ione, and Placerville do not appear to have misused their authority under the act. In fact, Ione has never issued Marks-Roos bonds.

Whether the actions of Waterford and San Joaquin are legal is not clear – this question is best left to the legal system. However, these actions appear inconsistent with the intent of the act. Not only have some of these actions put individual investors at risk, but according to the California Debt and Investment Advisory Commission (CDIAC), defaulting on bonds could affect the ability of governmental agencies throughout the State to raise funds for needed capital projects.

To be effective, the flexibility that the act offers local agencies must be accompanied by responsibility and accountability. The local agencies and government officials who approve misuses of the program should be held responsible and accountable for their actions. Immediate steps are warranted to ensure this flexibility is exercised appropriately by local agencies.

Audit Recommendations

The Legislature should determine if it intends cities to receive, in addition to their administrative costs bond proceeds for projects unrelated to those for which the bonds are issued. If the Legislature did not intend this, it should amend the act to both clarify its meaning and impose and appropriate penalty for local agencies who violate its wishes.

In addition, the state treasurer should convene a task force that includes representatives from the municipal marketplace to discuss further options for legislative change that would rein in abuse of the act.

The district attorney's office in each county should consider prosecuting the members of the governing boards of the PFAs if it finds these officials have misused public funds.

PFAs should take the following actions:

- Issue Marks-Roos bonds only when doing so will result in a significant local public benefit, as defined in the act, and use the proceeds only for the purposes for which the bonds were issued as well as related costs.

- Before financing projects, take prudent steps to ensure the projects will be reasonably able to repay the debt. This should include commissioning independent feasibility studies and appraisals and requiring that projects have necessary permits, entitlements, and plan approvals.

- Independently monitor the projects during construction.

- Properly account for bond proceeds and arrange for the accounts and records to be audited each year by a certified public accountant.

Finally, to mitigate the adverse effects of their actions, the cities should immediately take the following measures:

- Stop using interest earned on Marks-Roos funds for unrelated purposes.

- Return any unearned fees they have received from bond proceeds to the respective bond trustees for payment of debt service or other appropriate use.

98102 Prison Industry Authority: Its Outside Purchase of Goods and Services Is Neither Well Planned nor Cost Effective, September 1998

Senator Polanco requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit to determine the extent to which the Prison Industry Authority (PIA) buys and resells finished goods to their customers and the propriety of those activities as they relate to state government rules, regulations and policies.

Background

The PIA is under the policy direction of an 11-member board of directors and is technically part of the California Department of Corrections (CDC). The PIA was established to employ inmates, develop inmate work skills, and reduce cost of the CDC operations. The PIA operates manufacturing, service, and agricultural facilities at most of the CDC prisons and employs approximately 6 percent of the CDC institutional population.

The PIA sells inmate-manufactured goods and services exclusively to public entities. It produces many products, such as office and dormitory furniture, cabinets, shelves, clothing, textiles, footwear, gloves, flags, detergents, food services equipment, food products, detention furniture, concrete precast, signs, decals, bindery, printing, and key data entry as well as provides a wide variety of services.

Audit Results

The Prison Industry Authority (PIA) was established on January 1, 1983, as the successor to the California Correctional Industries Commission. The PIA is a penal program whose goals are to employ inmates, develop inmate work skills, and reduce the costs of operations of the California Department of Corrections (CDC). As such the PIA employees inmates in the manufacturing, service, and agricultural industry programs it operates and manages statewide. Its products are sold principally to state agencies, which are required by law to purchase the PIA's manufactured goods. However, in instances when the PIA cannot produce enough products or render services to meet demand, it conducts a "buyout," which means it purchases comparable finished goods and services from the private sector. The PIA subsequently resells these items to its customers at its public prices.

The Bureau of State Audits examined the extent to which the PIA buys and resells finished goods and services to its customers, and whether this activity is in accordance with state government rules, regulations, and policies. This examination covered July 1994 through December 1997 and revealed the following facts:

- The PIA bough finished goods and services from the private sector 656 times with a resale value averaging 1.7 percent of total sales, and in conducting these buyouts lost $208,000.

- The PIA profited on the sales of its other goods and services, indicating that some of its customers are subsidizing its losses on buyouts.

Also, when purchasing finished goods and services for resale, the PIA inappropriately uses emergency procurement procedures, which limits competition for the State's business, precludes its customers from choosing other vendors to supply their needs, and may not reflect the lowest cost available to the State. Moreover, it was found that the PIA does not adequately

plan ahead to meet the demand of its customers, especially in its poultry enterprise. Instead of establishing a statewide contract for chicken, the PIA uses emergency procurement procedures, rather than other alternatives, to purchase chicken when needed.

Further, according to the Bureau of State Audits' legal counsel, the PIA does not currently have the legal authority to buy and resell finished goods and services to its customers. This authority is vested in the Prison Industry Board and has not been delegated to the PIA.

Finally, the PIA purchases and resells processed eggs, primarily to the CDC. However, in these transactions the PIA functions strictly as the middleman because it does not produce processed eggs. Consequently, the PIA is not promoting inmate employment and is duplicating the efforts of the CDC's own procurement unit and that of the Department of General Services, which may result in additional administrative costs.

Audit Recommendations

The Legislature should clarify its intention for the PIA to purchase and resell finished goods and services to its customers. If the PIA's current practice is as the Legislature intends, the Prison Industry Board should delegate authority in writing to the PIA to do so.

The PIA should establish appropriate statewide contracts for finished goods and services it frequently must purchase from the private sector to supplement its own production. The PIA should also abide by the State's procurement procedures when purchasing any items not covered by a statewide contract.

The PIA should discontinue action as an agent for the California Department of Corrections or other state agencies to purchase items it does not produce.

Agency Response

The Prison Industry Authority agrees that it could improve its planning and use of contracts for purchases of finished goods and services. The PIA pledges to work with the Department of General Services to identify those contracts that would be in the best interest of the State. However, the PIA disagrees with the conclusion that it lacks the authority to purchase and resell finished goods and that its buyouts are not cost effective.

98105 Fair Political Practices Commission: Although It Follows the Law, Improvements Are Needed in Enforcement and Technical Assistance, May 1998

Assemblymember Lou Papan requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct a performance audit of the Fair Political Practices Commission (FPPC). Assemblymember Papan is concerned that funds budgeted for the FPPC's use are excessive and have allowed the FPPC to over-regulate California elections procedures.

Background

The FPPC has primary responsibility for the administration, implementation, and enforcement of the Political Reform Act of 1974 (1974 Act) and the California Political Reform Act of 1996 (1996 Act). The 1974 Act is primarily a disclosure law that provides guidelines for elected and appointed officials, government employees, and lobbyists related to ethics, conflicts of interest, gifts, honoraria, and campaign contributions. The 1996 Act places specific limitations on campaign contributions and establishes voluntary spending limits on all state candidates.

The FPPC has five members who serve a single four-year term. Two members are appointed by the Governor and one each by the Attorney General, Secretary of State, and State Controller. Only three members can be affiliated with the same political party.

The FPPC's proposed 1998-99 budget includes 85 staff members and approximately $6 million appropriated from the general fund.

Audit Results

The Bureau of State Audits' review found several problems with the State's Fair Political Practices Commission (commission), particularly in its enforcement division.

While the commission reasonably interprets the Political Reform Act of 1974 (act) – a disclosure law for elected and appointed officials and lobbyists – the commission's enforcement division does not open and close cases strictly on the merit of the complaints.

The Bureau of State Audits did not find any indications of bias in how cases are addressed. Nevertheless, the commission has left itself open to such charges because similar cases are often handled inconsistently; some are prosecuted while others go unaddressed.

The commission could improve customer service by learning more about the needs of individuals it regulates and by simplifying its forms and instructions. The commission's strategic plan also has few goals and performance measures allowing it to evaluate its effectiveness in enforcing the act.

Specifically, the commission's enforcement division often lets staff availability dictate whether it investigates certain complaints. When staff are not available (the enforcement division says it is often short of staff but has not documented this problem) will close or not assign some valid complaints and does not prosecute some violations equally. The enforcement division also has no way of prioritizing complaints based on severity and importance and it is not sufficiently

documenting reasons for opening or not opening investigations of complaints and the actions taken during investigations.

The Bureau of State Audits also noted that the enforcement division often delays referring complaints for investigation and delays conducting the investigations. These delays can result in loss of evidence and make enforcement impossible because a four-year statute of limitations has expired.

Further, it was found that the commission did not follow up on approximately 600 instances when public officials failed to properly disclose 1997 financial interests. As a result, it cannot be determined if the public officials who filed these forms have conflicts of interest between their personal financial interests and their government positions.

The Franchise Tax Board (FTB) is responsible for auditing most political campaigns and lobbyists and refers substantiated act violations to the commission. But because of inaction by the enforcement division, which believes many violations found in the audits fail to rise to the level of prosecution, the FTB's efforts are not as cost-beneficial as they could be. The enforcement division only investigated 87 of 712 audits referred to it over a five-year period. The enforcement division closed an additional 259 audits while taking no action at all. If the division would have taken the initiative to better direct FTB's efforts, some of the $1.1 million spent on the 259 audits that were ultimately closed could have been avoided.

Another branch of the commission, the technical assistance division, is not monitoring the work of the vast majority of the state filing officers responsible for collecting disclosure statements.

However, through its regulations and advice letter, the commission's legal division's interpretations of the act ore generally consistent with the law's intent (though the legal division lacks management tools to help it operate more efficiently). Furthermore, a substantial portion of the commission's recent regulations are the result of changes in the law.

Finally, the act itself has unrealistic limits. The act's current dollar limits for disclosures and restrictions of public officials – some set as early as 1974 – are low and may crate unfair situations restricting normal and reasonable activities of public officials. These low dollar limits may also have another undesirable effect in that they allow unscrupulous third parties, for as little as $300, to manipulate conflict-of-interest laws to there benefit. As a result, opposing public officials can be disqualified from voting on matters that would benefit these third parties.

Audit Recommendations

To help ensure the consistency of its enforcement activities, the Fair Political Practices Commission (commission) should decide whether to investigate complaints based only on merit and prioritize the complaints that it investigates. If the commission learns that it has insufficient staff to investigate complaints, it should use this information to request additional staff for the enforcement division.

To ensure that audits of campaigns, candidates, and lobbyists are cost-beneficial, the commission should work with the Franchise Tax Board to decide which violations and dollar levels warrant enforcement action. The commission should then vigorously pursue enforcement actions.

To improve the efficiency and consistency of its operations, the commission should develop general guidelines for investigative and enforcement actions. It should also develop a process to track the statute of limitations on the complaints it assigns for investigations.

The commission should obtain more customer feedback to ensure that its efforts education and assist customers are effective. By involving more users to review new and amended forms, the commission could obtain better insights on how to simplify its forms and instruction manuals.

To measure the effectiveness of its enforcement activities, education, and outreach efforts, and legal analysis, the commission needs to develop meaningful goals, objectives, and performance measures.

The commission should propose legislation to establish higher, more reasonable dollar disclosure and restriction limits. In determining these limits, the commission should consider inflation and other factors that will result in more reasonable dollar limits.

Agency Response

In its response, the commission generally concurs with the findings and recommendations, and believes that the audit was beneficial. However, it believes that the decision whether to investigate complaints must be based on staff availability, otherwise the commission may prevent private citizens from bringing their own civil suits against violators of the act. The commission also believes that it may not be able to implement some of the recommendations without increased funding.

98106 State Bar of California: Financial Outlook for the Admissions Fund Is Not As Bleak As Portrayed, May 1998

Senator Quentin Kopp requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit of the State Bar of California. Specifically, Senator Kopp requested the audit look into the revenue and costs of the admissions program from 1993 through 1997.

Background

The California State Constitution established the State Bar of California (State Bar) as a public corporation and requires every person admitted and licensed to practice law in California to be a member of the State Bar except when holding office as judge of a court of record. Chapter 4 of the Business and Professions Code, commonly referred to as the State Bar Act, provides guidance and direction to the State Bar in fulfilling its mission and carrying out its responsibilities.

The State Bar is guided by a board of governors (board) that consists of a president and 22 members: 16 attorneys and 6 public individuals who have never been members of the State Bar or admitted to practice before any court in the United States. The board has established various committees that provide policy and guidance regarding various functions. One of the committees established is the Committee of Bar Examiners.

The Committee of Bar Examiners administers the requirements for admission to practice law in California and to accredit law schools. These tasks are accomplished through the State Bar's Office of Admissions. The admissions process consists of three main areas: exam, moral assessments, and accreditation of law schools. The exam process includes development of the actual bar exams, administrations of the exams, and grading the exams.

Senator Kopp was informed that approximately $2 million has accumulated in a reserve account collected from fees charged applicants and from other activities of the admission program.

Audit Results

The State Bar of California (State Bar) is a public corporation established by the California State Constitution. The Business and Professions Code provides the State Bar with guidance and direction in fulfilling its mission to preserve and improve the justice system to assure a free and just society under law. Its committee of bar examiners assists in this mission by overseeing one of the major responsibility, licensing of attorneys. The State Bar's Office of Admissions (admission) provides direct support to this committee in the fulfillment of its duties.

During the next three years, admissions will not generate revenue sufficient to cover its yearly costs of operation and will have to use its existing fund balance of $2.2 million to cover its costs. Admissions projects that by the end of 2000 it will consume the existing fund balance and incur a deficit of $2.1 million. While the Bureau of State Audits (BSA) agrees it is possible admissions could consume its fund balance during the next three years, the BSA believes that the decline will not occur as quickly as it has projected. In 1998, the BSA estimates the fund balance will drop to $1.5 million, not the $1 million predicted by admissions. Furthermore, 1n 1999, the BSA expects admissions will still have money left in its fund, rather than incur a deficit as it predicted. Not until 2000 does the BSA anticipate the fund to potentially incur a deficit; even then, the BSA

expects that the deficit will be no greater than $629,000, considerably less than the $2.1 million deficit projected by admissions. On the other hand, the fund could retain a positive balance of as much as $319,000 in 2000.

Admissions has inaccurately portrayed a bleak financial outlook for the Admissions Fund by basing its revenue and expense estimates for 1998 on questionable assumptions and then carrying these assumptions forward to its estimates for 1999 and 2000. Specifically, it based its revenue projections of $7.9 million for 1998 primarily on data from 1995 rather than using a combination of revenue figures, law school enrollment data, and the number of exam applicants from prior years. As a result, admissions projected its revenue to drop by $680,000, from $8.6 million in 1997 to $7.9 million in 1998. However, the BSA's review of historical trends indicated that such a dramatic decrease appears unlikely. Instead, the BSA projects that revenues in 1998 will be approximately $8.2 million.

Meanwhile, admissions' expense projection of $9.1 million contained questionable and duplicative costs. Specifically, the BSA questions $125,000 in expenses because they represent unusually high increases from actual expenses in prior years. In addition, admissions did not coordinate budgeting decisions for parking and building maintenance expenses among its staff and with other State Bar staff, resulting in a duplication of $61,000 in expenses. By understating its revenue projection by $359,000 and overstating its expense projection by $186,000 for 1998, admissions understated its fund balance by $545,000. By carrying these assumptions forward, admissions also understated its fund balance in 1999 and in 2000.

In October 1997, the governor vetoed the State Bar's annual membership fee bill. As a result, actual expenses could be $329,000 less than the amount projected by admissions. Because of the uncertainty regarding the effect of organizational funding decisions as well as the impact of legislation currently being considered, the BSA cannot project the impact of these events for 1999 and 2000.

Audit Recommendations

To develop a more reliable picture of its future financial condition, admissions should do the following:

- Use current statistical data and historical data to project exam revenues.
- Use reasonable and justifiable assumptions in developing estimates of future activity and apply these assumptions consistently.
- Coordinate responsibilities among its directors to ensure that all costs are covered but not duplicated.
- Prepare and maintain documentation to support its basis for projecting revenues and expenses that are significantly different from those of prior years.

In addition, admissions and the Office of Financial Planning should clarify with each other the methods used to budget certain admissions fund expenses, such as parking and building costs, to ensure that these expenses are not duplicated in the overall projection for the admissions fund.

Agency Response

The State Bar agrees with the recommendations and stated that it will be revising some of its budgeting procedures to ensure that revenue and expense projections for the Admissions Fund are reasonable and justifiable. The State Bar also stated that the membership fee structure that has not yet been determined will have a direct impact on the budget of the Admissions Fund in 1998 and future years.

98107 Los Angeles County Metropolitan Transportation Authority: Creating a Separate San Fernando Valley Authority Would Take a Split of Assets, Revenue, and Debt, July 1998

Senator Tom Hayden requested the Joint Legislative Audit Committee to direct the Bureau of State Audits to conduct an audit to determine the amount of bond debt incurred by the Los Angeles County Metropolitan Transportation Authority (MTA) to acquire the real and personal property that would be transferred to the San Fernando Valley Transportation Authority (VTA), as proposed by Senate Bill 1886.

Background

The Los Angeles County Metropolitan Transportation Authority (MTA) was established in 1993 by state law as the result of the merger of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District. The MTA is governed by a 14-member board of directors and it oversees all regional bus and rail operations; plans and constructs a countywide rail system; develops transportation policies and a long-range plan; programs federal, state, and local revenues for public transit, transportation demand management, bikeways, and highway projects of Los Angeles County; and coordinates activities among the county's many transportation agencies.

Senator Hayden has introduced legislation – SB 1886 – that would create a VTA, replacing the MTA as the regional transportation planning and programming agency in the San Fernando Valley region (an area of more than 225 square miles and 1.3 million residents). Senator Hayden is concerned that the fiscal viability of a VTA depends, in large part, on its share of debt service for the Red Line Subway being built by the MTA. (*Note: SB 1886 was amended to delete provisions creating a VTA and as amended did not pass in the 1997-98 session)*

Audit Results

The Los Angeles County Metropolitan Transportation Authority (MTA) is responsible for all aspects of ground transportation in Los Angeles County, which includes the San Fernando Valley. A legislative proposal would call for a separate San Fernando Valley Transportation Authority (VTA) with authority similar to the MTA.

Under such a proposal the MTA would hand over a portion of the northern extension of the Metro Red Line, three rail corridors (rights-of-way), and bus operations to the proposed VTA. When completed, the MTA will have spent $1.1 billion to purchase or construct these assets, with $560.3 million in principal and interest still remaining. This represents about 10 percent of the debt MTA secured with sales tax revenues from Proposition A and Proposition C.

In addition to certain local, state, and federal revenues, the Bureau of State Audits (BSA) estimated that 20 percent of the MTA's sales tax revenue would also transfer to the VTA. The BSA concluded that shifting 20 percent of the existing debt to the VTA to match the 20 percent of total MTA sales tax revenue it will receive would keep both entities viable and support their ability to issue additional bonds as needed. The BSA's analysis found the VTA would have net revenues in fiscal year 1998-99 of $38.6 million over what it needs for operating expenses and payments of principal and interest on the existing debt.

98109 Emergency Medical Services Fund, January 1999

Senator Ken Maddy, Vice-Chair of the Joint Legislative Audit Committee, requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit to ensure that counties with an Emergency Medical Services (EMS) Fund are depositing into their MES funds the amount of money required by statute (Senate Bill 12, Chapter 1240, Statutes of 1987).

Background

The Emergency Medical Services (EMS) Fund was established in 1987 by state law as a funding mechanism to compensate emergency physicians, specialty physicians on call to the emergency department, and hospitals for the provision of emergency services for those who have no health insurance and are unable to pay for their care. The Emergency Medical Services Authority in the Health and Welfare Agency is primarily responsible for assessing EMS areas to determine the needs for additional emergency medical services; planning and implementing guidelines for emergency medical services; and providing technical assistance to existing agencies, counties, and cities regarding emergency medical services systems.

The EMS fund relies upon each county treasury to transfer its EMS Fund a fraction of every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses and vehicle code violations, as set forth in statute. Once the fund is established, statutes require the county to allocate a certain portion of the funds to physicians, hospitals, and the county for emergency services and for the cost of administering the fund. Each county that established this fund reports to the Legislature on January 1 of each year the implementation and status of the EMS Fund. Among other things, the report includes the fund balance, the amount of money disbursed, the pattern and distribution of claims, the amount of moneys available to be disbursed, and a statement of policies and procedures.

Senator Maddy has received information that several counties have experience an increase in collections of penalty assessment funds, while there has been a decrease in the amounts these counties place in their EMS Fund. Senator Maddy is concerned that some counties may not be placing in their EMS funds the proper amounts as required by statute.

Audit Results

To compensate health care providers for emergency services for the uninsured and medically indigent and to ensure this population has continued access to emergency care, the Legislature enacted Chapter 1240, Statutes of 1987, allowing counties to establish an Emergency Medical Services (EMS) fund. Through EMS funds, counties can reimburse these providers for up to 50 percent of their losses. To date, 43 counties have established EMS funds, which they finance through penalties assessed on certain criminal and motor vehicle fines and forfeitures.

The Bureau of State Audits reviewed the administration of EMS funding and the counties' compliance with laws governing the use of the funding, focusing on a sample of six counties of varying sizes-Humboldt, Los Angeles, Sacramento, San Bernardino, San Francisco, and San Joaquin. While the six counties appropriately allocate penalty assessments to their EMS funds, annual deposits into their funds have decreased significantly since fiscal year 1990-91. This downward trend is primarily due to the adverse effects of legislation that diverted money from

the EMS funds. EMS fund deposits from state tobacco tax revenues have also declined because of a decrease in cigarette and tobacco purchases.

Additionally, although the counties ensure that reimbursements to EMS providers are consistent with state law, the financial support providers receive is often less than it could be. Because of their own policies and legislative constraints, counties are not fully utilizing EMS funds to reimburse providers. Consequently, the six counties reviewed have accumulated balances totaling $30.3 million in their EMS funds. As a result, the counties may deprive health care providers of cost reimbursement when providing emergency medical care.

Finally, the BSA noted weaknesses in the counties' management of EMS fund administrative costs. Although the six counties visited routinely allocate 10 percent of their EMS revenue for administrative costs, two of the counties could not fully substantiate their administrative charges. Moreover, some counties did not spend the entire amount allocated for administration. Rather, they retained the excess funds in a sub-account to reimburse subsequent years' administrative costs instead of reallocating the funds to other EMS program accounts. The law states that counties can use up to 10 percent of the EMS funds for administration; however, it does not allow counties to carry over the entire amount of unspent administrative funds to cover administrative costs in subsequent periods. As a result, these counties are violating the law's intent by not reallocating the unused administrative funds to all EMS accounts. Further, because they do not reallocate unused administrative funds, counties are not maximizing the benefit to EMS providers by increasing the reimbursement rate for unpaid provider costs.

Audit Recommendations

To maximize financial support for emergency medical service providers and better achieve the objectives of the EMS statutes, the following actions are recommended:

- San Bernardino and Los Angeles counties should consider increasing their existing reimbursement rates in order to fully utilize their growing EMS fund balances. Moreover, all counties with EMS funds should periodically review the status of their EMS fund reserve and adjust reimbursement rates accordingly.

- The Legislature should consider revising the current statute to allow counties the flexibility to exceed the 50 percent maximum reimbursement rate for EMS providers when counties accumulate increasingly large EMS fund balances.

- Moreover, the Legislature should consider expanding the type of medical services allowed under the current law to enable counties to provide financial relief to other medical service providers incurring unreimbursed costs.

- San Joaquin County should initiate disbursements of the EMS revenues accumulated from court penalty assessments.

- Additionally, San Joaquin County should make the disbursements on at least an annual basis.

- All counties should use EMS administrative funds solely for EMS program expenses and maintain these funds in separate accounts. They should also reallocate unused administrative funds in a given fiscal year to all EMS accounts based on the percentages described in the Health and Safety Code.

- San Bernardino County should begin depositing interest earned on EMS fund balances from court penalty assessments back into the EMS fund. Moreover, the county should calculate the unpaid interest earned on such EMS balances since January 1, 1992, and deposit those funds into the EMS fund.

Agency Response

We received comments from five of the six counties we reviewed. Humboldt County chose not to provide written comments to the report. In general, the counties agreed with the conclusions and recommendations. However, Los Angeles and San Francisco counties disagreed with the conclusion regarding increasing emergency medical service provider reimbursement rates when available resources exist. San Francisco County also disagreed with the conclusion that the law does not allow counties to carry over unspent administrative funds solely to cover administrative costs in subsequent periods.

98112 State Water Quality and Drinking Water Agencies, December 1998

Senator Byron Sher requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit to determine whether the State is adequately protecting California's drinking water from gasoline contamination.

Background

The State Water Resources Control Board (SWRCB) was created by the Legislature in 1967 to preserve and enhance the quality of California's water resources and ensure their proper allocation and efficient use for the benefit of present and future generations. Further, the SWRCB California Water Code, Section 13200, established nine Regional Water Quality Control Boards to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the State's water, recognizing local differences in climate, topography, geology, and hydrology. Each region develops "basic plans" for their hydrologic areas, issues waste discharge requirements, takes enforcement actions against violators, and monitors water quality.

Other state and local agencies are also involved in protecting the quality are also involved in protecting the quality of California's drinking water. For example, the Department of Health Services is responsible for protecting the public from consuming unsafe drinking water in order to promote an environment that will contribute to human health and well-being. Further, the Office of the State Fire Marshal ensures maximum safety of hazardous liquid pipelines via a system of inspection, testing, and enforcement.

Last year the State Environmental Committee conducted an oversight hearing on peritoneum tank clean-up programs at the State and Regional Water Quality Control Boards. Concerns were expressed at the hearing regarding water pollution from dangerous gasoline contaminants including Methyl-Tertiary-Butyl Ether. Further, voicing its concerns, the Sierra Club wrote Senator Sher a 40-page document with over 4000 pages of attachments requesting an audit by the state auditor. The issue paper includes 60 specific questions or areas of interest for the auditor to address. These questions relate to various issues, including many pertaining to findings at several specific sites. According to the Sierra Club's letter, gasoline has been found in several sites and is said to be the reason why two Santa Clara Valley District deep-water wells are shut down. The Sierra Club believes that the gasoline contamination is coming from leaking gas pipes and storage tanks.

Audit Results

Although the State of California has ample evidence that gasoline leaking from underground storage tanks is jeopardizing the safety of our drinking-water supplies, it has not acted quickly and decisively to address this potential health hazard. The scientific community and the public are particularly concerned about leaking storage tanks contaminating numerous groundwater sites and some drinking-water wells with methyl tertiary-butyl ether (MTBE), a gasoline additive that reduces air pollution from automobile exhaust, but which the federal government has classified as a possible cancer-causing agent.

State legislation directs various state and local agencies to oversee the safety of California's drinking water, including the Department of Health Services (Health Services), the State Water Resources Control Board (state board), the California Environmental Protection Agency (California EPA), and nine Regional Water Quality Control Boards (regional boards). As early as

1990, Health Services' officials became aware that MTBE was contaminating drinking-water wells within California; however, Health Services did not establish regulations to test for MTBE in drinking water until 1997, nor did it adopt interim emergency regulations, even though it has the authority to do so. The state board also shares responsibility for not providing leadership to the regional boards and local agencies responsible for alleviating groundwater contamination because it has not yet issued specific guidelines or standardized procedures for cleaning up MTBE. Thus, MTBE levels at some contaminated groundwater sites remain high, posing potential threats to nearby drinking-water wells.

Moreover, the State's process for regulating the safety of its citizens' water, and especially for ensuring that gasoline does not contaminate drinking-water sources, has multiple shortcomings. The State has been inconsistent in its efforts to identify and clean up leaking underground storage tanks, and the California EPA's approach for overseeing the local agencies responsible for issuing permits to storage tank operators and for monitoring the tanks may not assure that the agencies catch all leaks and deficiencies. Health Services' procedures for obtaining sample analyses from public water systems also have flaws. Health Services needs to improve its procedures to ensure that public water systems submit laboratory results promptly so that agencies can identify and alleviate contamination quickly.

To further compound the problems surrounding MTBE contamination, Health Services and the state and regional boards are not making certain that public water system operators, storage tank owners or operators, and regulatory agencies responsible for detecting and cleaning up chemical contamination are doing their jobs. Not only does the State regulate underground storage tanks ineffectively, it has failed in some instances to aggressively enforce the State's Safe Drinking Water Act and the laws governing underground storage tanks. Specifically, Health Services, the regional boards, and local agencies have not adequately enforced laws that require prompt follow-up monitoring for chemical findings and contaminated sites, notified the public about chemicals found in drinking water, and managed the complete cleanup of chemical contamination of groundwater.

Some regulatory problems arise from poor communication among various state and local agencies. However, a geographical information system (GIS)-the State's proposed solution for assessing contamination risks to drinking-water sources, as well as for relaying information about these risks to responsible agencies-also requires improvement. Currently, both Health Services and the state board are working on GIS projects to map potential sources of drinking-water contamination, and this duplication of effort could be unnecessarily costly to the State. Health Services should serve as the lead developer for the GIS because it can use the system to evaluate risks to the State's approximately 16,000 drinking-water sources and thus accomplish the goals of the federally mandated Drinking Water Source Assessment and Protection Program.

Finally, neither agency can effectively implement a GIS until the State significantly improves the databases containing information on the locations of possible contamination.

Audit Recommendations

To ensure that California's drinking water is safe from contamination by gasoline leaking from underground storage tanks, the California Environmental Protection Agency and the Health and Welfare Agency, which oversees Health Services, need to make certain that the state, regional, and local agencies listed below fulfill their designated responsibilities and improve their policies and procedures in the ways outlined.

The California Environmental Protection Agency needs to take the following steps to locate leaking underground storage tanks:

- Ensure that local agencies increase their efforts to identify storage tanks without permits, issue permits as appropriate, monitor storage tank safety, and penalize owners or operators that delay reporting leaks.

- Modify its existing procedures for evaluating local agencies' adherence to program requirements for leaking storage tanks by requiring its own evaluators to review these cases.

The Department of Health Services needs to do the following to manage threats to drinking water systems:

- Strengthen its process for promptly obtaining and analyzing laboratory results from all public water systems so it can quickly notify other agencies of threats to drinking water.

- Ensure that it assesses the safety of drinking-water sources for public water systems at least once every three years, as required by state regulations.

- Consistently enforce the State's water quality laws by following up on corrective actions taken by the district offices and the local agencies.

- Take the lead in establishing a geographical information system (GIS) that will fulfill requirements for the federally mandated Drinking Water Source Assessment Protection Program, help the State monitor risks to drinking-water sources, and allow for state and local agencies to exchange accurate information about these risks.

The State Water Resources Control Board should act on the following suggestions to help prevent further contamination of drinking-water wells:

- Issue the regional boards and local agencies a set of clear guidelines for investigating and cleaning up MTBE in groundwater.

- Assist in developing Health Services' GIS by correcting problems with the state board's Leaking Underground Storage Tank Information System (LUSTIS) so that this database is both accurate and compatible with GIS.

Further, the regional boards and local oversight program agencies directly responsible for managing groundwater sites affected by gasoline should take the following actions:

- Notify Health Services promptly about potential contamination.

- Use their enforcement authority to penalize storage tank owners or operators who do not comply with the law.

- Continuously follow up on enforcement actions and cleanup efforts.

Agency Response

The Department of Health Services generally agrees with the recommendations in our report, with the exception of our recommendation that it should no longer permit its staff to round off the numbers when determining whether a chemical exceeds the maximum contaminant level. Additionally, Health Services still believes that emergency regulations were not justified and that the approach it took to regulate MTBE was prudent. Finally, Health Services states that if it is to expand its role on the State's GIS projects, it will require a substantial increase in resources.

Similar to Health Services, the State Water Resources Control Board generally concurs with the recommendations in our report. However, the state board believes that it would be appropriate for it to complete the tasks for its existing GIS project, outlined in the 1997 legislation, before Health Services assumes the lead role for ensuring that a GIS provides the necessary information to protect drinking-water wells. Also, the state board indicates that it will work cooperatively with Health Services to ensure that it avoids duplication of efforts and that its efforts are complementary to those of Health Services.

Finally, the California Environmental Protection Agency supports the position taken by the state board. In addition, the California EPA provides some supplemental information about its Unified Program.

98119 Los Angeles County Metropolitan Transportation Authority: Its Plan for Managing Debt is Reasonable, October 1998

Senator Quentin Kopp and Senator Tom Hayden requested an audit of the Los Angeles Metropolitan Transportation Authority's financial condition. Specifically, the senators are concerned with the level of debt incurred by the agency and the resulting expenditures for the interest on that debt.

Background

The Los Angeles County Metropolitan Transportation Authority (MTA) was established in 1993 by state law as the result of the merger of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District. The MTA is governed by a 14-member board of directors and it oversees all regional bus and rail operations; plans and constructs a countywide rail system; develops transportation policies and a long-range plan; programs federal, state, and local revenues for public transit, transportation demand management, bikeways, and highway projects of Los Angeles County; and coordinates activities among the county's many transportation agencies.

The MTA receives the funding for its operations and capital projects from a variety of sources, including local, state, and federal governments. Voter approved Proposition A and Proposition C each impose a one-half percent sales and use tax and generate approximately 29 percent of the MTA's budgeted annual revenues for fiscal year 1998-99. It also receives state funds, such as gasoline tax and sales tax revenues, to be used for transportation, as well as building and operating rail and bus lines, and other transportation purposes. The federal government provides funding for similar purposes. Additionally, bus and all other transit riders contribute about 9 percent of budgeted annual revenues through fare box collections, passes, and tokens.

The MTA and its predecessors sold bonds to assist in the construction of rail systems and to purchase equipment such as rail cars. This long-term debt is secured by various revenue sources, including Proposition A and Proposition C sales and use taxes. As of June 30, 1998, the MTA estimates it will have incurred long-term debt totaling approximately $5.66 billion with annual principal interest payments of approximately $212.8 million for fiscal year 1998-99. According to newspaper accounts, the MTA's debt will grow to approximately $7 billion in fiscal year 1998-99. The principal and interest payments of $360 million on that debt will consume more than 30 percent of the MTA's operating budget of $1.2 billion according to the new articles.

Audit Results

The Los Angeles County Metropolitan Authority (MTA) coordinates all public transportation services in Los Angeles County, including long-range regional transportation planning, light and heavy commuter rail systems, and bus services. This review focuses on the MTA's existing financial condition and the impact of its current and proposed mix of debt type and composition, its debt structure, on its financial viability and solvency.

As of June 30, 1998, the MTA had approximately $3.2 billion in outstanding long-term debt. Additionally, over the remaining term of the debt, the MTA will pay interest totally approximately $2.8 billion. Most of this debt will be paid by sales tax revenues from voter-approved Proposition A and Proposition C. Each proposition imposes a 0.5 percent sales and use tax on

goods and services purchased in Los Angeles County. Expenditures incurred for principal and interest represented approximately 24 percent of the MTA's total operating expenditures during fiscal year 1997-98.

The Bureau of State Audit's review found that the MTA has taken a number of steps to ensure that is existing and proposed long-term debt structure does not jeopardize its overall financial viability and solvency. Specifically, the MTA is reasonably projecting its financial activities, particularly local sales tax receipts, a primary source of revenues dedicated to debt repayment. In addition, as a condition of receiving certain federal funds, it has prepared a seven-year restructuring plan outlining its strategies for addressing future anticipated deficits. Federal agencies have reviewed and approved this plan and concluded that the MTA's recent efforts, if carefully monitored, should assist in improving its financial condition. The MTA also continues to ensure that its long-term debt structure falls within prescribed limits for ongoing solvency. However, it does not prepare formal written analyses discussing the type and composition of its new debt, nor has it issued a formal long-term debt policy summarizing its goals and strategies, practices that the BSA believes would further strengthen its overall financial viability.

Audit Recommendations

To continue maintaining its future financial viability and solvency, the MTA should do the following:

- Formalize its long-term debt policy to be clear on its objectives and strategies. This policy should reflect its recent focus of using conservative revenue projections.

- Prepare written analyses describing its decisions on the type and composition of each proposed new debt issue. In light of recent criticism of its debt structure and financial condition, the MTA should describe why its choice is financially viable. In addition, the analysis should explain how the type and composition of the debt are consistent with the MTA's long-term debt policy, particularly if the structure of the proposed new debt may appear unusual or questionable.

Agency Response

The MTA agrees with the recommendations and plans to present a formal debt policy to its board of directors for adoption. The debt policy will require written analyses describing the decisions on the type and composition of each debt transaction.

Audits Approved in 1998, but not yet released

98104 Health Care in California

Assemblymember Wally Knox requested that the Joint Legislative Audit Committee direct the State Auditor to conduct an audit to survey physicians, health maintenance organizations, and insurance companies and assess the impact on the cost of health care in California of delayed treatment authorizations and delayed payments to physicians.

Background

Health care in California encompasses various payment and delivery systems, including health care service plans like health maintenance organizations (HMOs), preferred provider organizations (PPOs), point of service plans (POS), medical groups/independent practice associations (IPAs), and many other. HMOs and other full-service health plans provide for health care service for approximately 18 million California enrollees, while specialized health plans cover over 30 million enrollees. Physicians contract on average with 15 different health plans and may also participate in the Medi-Cal and Medicare programs. According to the California Medical Board, there are over 79,000 licensed physicians in the State.

The operations of managed care organizations are regulated and administered by many government and private entities. Over 100 HMOs, other full-service plans, and specialized plans (like dental, vision, chiropractic, and pharmacy plans) are regulated by the Department of Corporations under the Knox-Keene Health Care Service plan Act of 1975. PPOs, which are self-funded by employers and managed by third-party administrators, are not regulated at the state level. Other PPOs are delivered by indemnity insurance companies, regulated under the California Insurance Code, and enforced by the Department of Insurance. Further, the Department of Health Services contracts with some of the health care service plans to serve Medi-Cal beneficiaries. Additionally, the Department of Industrial Relations oversees managed care organizations offering services for work-related injuries and illnesses.

The Health and Safety Code, Section 1371, establishes a time frame in which payments to physicians must be made. Specifically, a health care service plan must reimburse a claim from a physician as soon as practical, but no later than 30 to 45 days after the receipt of a valid claim. Failure to pay within the 45 day period will result in the accrual of interest on the unpaid claim at the rate of 10% per annum. The Department of Corporations is responsible for the administration and enforcement of this section and others, which are part of the Knox-Keene Health Care Service Plan Act of 1975.

Audit Scope and Objectives

This audit was approved by the committee in July 1998 and will provide an independent survey of information relative to health care and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues

2. Determine the roles, responsibilities, processes, and procedures relevant to the approval of and payment for health care services.

3. Research the health care environment through existing studies, empirical information, and interviews with private physicians, HMOs, insurance companies, independent practice associations, medical and insurance associations, and state and regulatory officials.

4. With the assistance of skilled methodologists, determine the best approach to maximize data reliability of survey results by field validation, testing, or other means.

5. Design and administer a survey instrument to determine whether physician claims are being paid by HMO's and insurance carriers within statutorily mandated timelines.

6. Analyze and interpret the results of the survey.

98110 Medi-Cal Managed Care Two Plan Model

Assemblymember Scott Wildman requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit to review and assess the capacity of the Department of Health Services to effectively monitor the quality and impact of the Medi-Cal Managed Care Two-Plan Model as implemented in 12 counties around the State. Specifically, Assemblymember Wildman is concerned with the model's availability, cost-effectiveness, and the quality of care.

Background

January 1996, the Health Care Financing Administration approved California's Medi-Cal Managed Care Two-Plan Model (two-plan model) to expand Medicaid managed care into 12 counties. Medicaid beneficiaries in these 12 counties are offered a choice of two managed care plans. One is a "mainstream plan," offered by a commercial health plan selected by the State. The other one is a "local initiative plan," which includes existing county hospitals and health care facilities, as well as other local providers. The purpose of the two-plan model is to improve access and provide a full range of medical services while containing costs.

During calendar year 1996, only 2 counties had implemented the two-plan model with initial dates of operation during the year: Alameda and Kern counties. In 1997, the other 10 counties had the two-plan model in place with initial dates of operation by the end of the calendar year. These 10 counties are Contra Costa, Fresno, Los Angeles, Riverside, San Bernardino, San Francisco, San Joaquin, Santa Clara, Stanislaus, and Tulare.

Although contractors provide the Medi-Cal services to eligible beneficiaries in two-plan counties, the Department of Health Services (DHS) contracts with the providers and is responsible for monitoring the Medi-Cal program. The DHS requires contractors to submit information to it periodically regarding the contractor's financial viability, services provided, enrollment reports, and provider network. The DHS also performs onsite reviews and annual medical audits of its contractors to ensure continued compliance.

Audit Scope and Objectives

This audit was approved by the committee in February 1999 and will provide independently developed and verified information relative to the DHS and the two-plan model and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. Determine how the DHS monitors the quality, access, and impact of the Medi-Cal Managed Care program and assess its effectiveness;

3. Examine the State's reviews and compliance audits to determine if deficiencies noted are adequately disclosed, followed-up, and corrected;

4. For Los Angeles, Alameda, and Kern, calculate service outcomes for certain indicators and compare them to industry practice and medical standards;

5. Review prior reports issued in regards to the Medi-Cal Managed Care program and determine if the DHS has taken any corrective action as a result.

98113 Adult Education Fund

Senator Ray Haynes requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit to determine whether public funds for the California Department of Education's (CDE) Adult Education Program were misused.

Background

The Adult Education Fund was established in 1993 by state law designed to fund the Adult Education Program. The Superintendent of Public Instruction oversees the approximately $455 million fund ($429 million in state funds and $26 million in federal funds) and distributes it based, in part, on the school districts' adult education average daily attendance. The school districts are required to deposit the money in a separate fund to be expended only for adult education purposes. The Adult Education Program is intended to serve adults interested in attending school for citizenship training and/or improve literacy skills, employability, and parenting abilities. The program is designed to meet the special needs of individuals such as the disabled, older persons and non- and limited-English-speaking adults.

Senator Haynes is concerned that public funds from the English as a Second Language/Citizenship Program may have been misused. Specifically, a newspaper recently reported on a federal investigation focusing on allegations that community-based organizations may have been paid for classes that were never held and equipment that was never purchased. The article also reported that CDE officials were being investigated to determine whether they ignored to quashed complaints from their staff about alleged misuses of Adult Education Funds.

Audit Scope and Objectives

This audit was approved in July 1998 and will provide independently developed and verified information relative to the administration of the Adult Education Fund and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues.

2. Determine the extent to which state or federal agencies, including the CDE, investigated the allegations of misuse of funds. Determine whether the scope of such investigations are the same or different from this audit and the extent to which we can rely upon the work of the other auditors or investigators.

3. Determine whether the State Board of Education and the CDE appropriately fulfilled certain legal mandates contained in law regarding the adult education program, including the budget act requirements and provisions of the state plan.

4. Select a sample of approximately 10 to 15 community-based organizations that have received Adult Education Funds representing a cross-section of such grant recipients and determine:

    - The amount of state or federal funds the CDE paid to the organizations

    - Whether recipients of the funds can prove that they provided the services for which they were paid by the CDE

- Whether the CDE took appropriate investigative or corrective action upon learning of alleged abuses by the community-based organizations.

5. Review and assess the effectiveness of the CDE's grant award process (similar to the scope of the CDE's proposed independent CPA review.) Specifically, the review should include, but not be limited to, the CDE's application, eligibility determination, selection, and monitoring process and the program funding history.

98114 State Personnel Board's Hearing and Appeal Process

Senator Steve Peace requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit of the State Personnel Board (SPB) to determine whether the evidentiary hearing and appeal processes conducted by the Administrative Law Judges (ALJs) and the SPB are fair and unbiased.

Background

The SPB is a neutral body responsible for administering a merit system of civil service employment within California state government. The SPB's authority to enforce the civil service statutes is a set forth in the California Constitution. As part of this responsibility, the SPB has established administrative procedures to resolve appeals of alleged violations of civil service laws and rules governing the merit principle. Many of the SPB
Appeals are heard by ALJs and certain merit appeals are head by a Staff Hearing Officer. The SPB appeals process may involve an evidentiary hearing before an ALJ, a less formal nonevidentiary hearing before a Staff Hearing Officer, or an informal investigation, with or without a hearing. For most appeals, the SPB has six months from the filing of an appeal or 90 days from its submission to resolve the case, and may extend this period by 45 days. SPB hearings are open to the public. A party may be represented by counsel, any other person or organization, or may represent him/herself.

Senator Peace is concerned that the SPB's evidentiary hearing and appeal processes may be unfair, biased, and mismanaged. Specifically, Senator Peace reports that the Senate Budget Subcommittee #4 received allegations of unfair and biased hearing-officer and board practices; violations of open meeting laws; falsification of evidence; and cumbersome, costly and untimely procedures.

Audit Scope and Objectives

This audit was approved by the Joint Legislative Audit Committee in July 1998 and will provide independently developed and verified information relative to the operations of the SPB's evidentiary hearing and appeal processes and will:

1. Review and evaluate the laws, rules, and regulations relevant to the issues.

2. Determine whether the hearings and appeal processes comply with state law and regulation.

3. Determine whether the SPB uses closed meetings to make personnel decisions and whether these meetings comply with law.

4. Review and assess the adequacy of the SPB's caseload tracking and monitoring system.

5. Determine whether the disposition of various types of cases complies with the required timelines.

6. Determine the number of appeals made to the court system as compared to the number of reversals.

7. Review and assess timeliness and cost-efficiency of the system.

8. To the extent possible, determine whether the hearing and appeal processes include nondiscriminatory protections to ensure that everyone is afforded the same opportunities and is treated equitably under the State's law and regulation.

98115 California Science Center

Senators Dianne Watson, Steve Peace, and Richard Polanco requested that the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct a comprehensive performance and personnel audit of the California Science Center to determine whether the State's investment and interests are protected.

Background

The California Science Center (center), formerly known as the California Museum of Science and Industry, is an educational, scientific, and technological center and is administered by a nine-member board of directors appointed by the Governor. It was created to stimulate interest of Californians in science, industry, and economics. The center is located in Exposition Park, a tract of land owned by the State and it exhibits and conducts programs in a number of state-owned buildings.

The center's activities are financed mostly by the State's General Fund and the California Museum Foundation Fund. The California Museum Foundation (foundation) is a nonprofit corporation established to solicit funds for acquiring and maintaining exhibits, and assisting in the center's educational activities.

The Senators are concerned that the relationship of the center and the foundation has changed and my no longer be in the best interest of the State. They believe that the foundation's role in the daily operations and management of the center has increased, while the State's has decreased.

Audit Scope and Objectives

This audit was approved in July 1998 and will provide independently developed and verified information relative to the operations, management, and personnel practices at the center and will:

1. Review and evaluate the laws, rules, and regulations relevant to the issues.

2. Determine whether the center has and complies with an up-to-date strategic plan that defines its mission, organizational goals, objectives, and performance measures.

3. Determine whether the center exercises the appropriate level of authority as defined by relevant laws, rules, regulations, and agreements.

4. Review and assess statutory and actual roles, responsibilities, and relationships of the various organizations and individuals involved.

5. Review and assess the efficiency and effectiveness of the center's fiscal and program operations and concessions including changes in staffing levels between the entities.

6. Review and assess financial agreements, contracts, and leases entered into by the center.

7. Examine personnel policies and practices, including those used for employment, promotions, grievances, and complaints.

8. Determine whether the center's personnel policies and procedures are current and comply with state and federal regulations, and are comparable to industry practices.

9. Investigate the status of specific discrimination and harassment complaints.

98116 Year 2000 Progress

Assemblywoman Elaine Alquist, Senator Quentin Kopp, and Senator John Vasconcellos requested the Joint Legislative Audit Committee to direct the Bureau of State Audits to conduct an audit to determine the Year 2000 (Y2K) progress in state departments, agencies, commissions, and boards.

Background

In November 1996, the Department of Information Technology (DOIT) issued the *"California 2000 Program Guide"* requiring each department to provide the DOIT with the status of its Y2K efforts and an inventory of its automated applications and databases. Less than a year later the governor signed an executive order directing departments to have their "essential systems" Y2K compliant by December 31, 1998.

The DOIT reported that California has more than 1,357 "mission critical" information technology systems/projects needing Y2K remedy in 1998. An independent consulting group observed that industrywide, only 12 percent of these projects were completed on time and within budget. The risk is that if these mission critical systems/projects miss their targeted implementation dates, it is likely to cause an interruption in key services or contaminate critical financial systems.

The DOIT currently requires state departments to submit monthly tracking reports listing the Y2K status of each mission critical project. Although the DOIT does not audit any of the departments' reported information, it does report its oversight activity to the Legislature through quarterly reports. The legislative members, in turn, use the reports to question department officials about their Y2K projects.

Assemblywoman Alquist and Senators Kopp and Vasconcellos are concerned that computer software and hardware not made compliant by December 31, 1999, could potentially have harmful effects on the everyday business needs of the State.

Audit Scope And Objectives

This audit was approved in July 1998 and will provide independently developed and verified information relative to the State's Y2K progress and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. Determine the status of Y2K conversions for departments with "mission critical" systems;

3. Review and assess the impact of Y2K conversion work, or the lack thereof, on selected systems that may not have been defined as "mission critical";

4. Determine the status of Y2K conversion for state government entities outside of the DOIT's purview; and

5. Determine the extent to which state agencies have addressed Y2K issues with regard to embedded chip technology.

98117 Child Lead Poisoning Prevention

Assemblymember Mike Honda requested a performance audit of the Department of Health Services' (department) Childhood Lead Poisoning Prevention Branch to provide an evaluation of the program. Assemblymember Honda is concerned that the program is not achieving its goal of eliminating childhood lead poisoning.

Background

The department administers a variety of programs to accomplish its mission of protecting and improving the health of California residents. The department's efforts includes programs for preventing disease and premature death including those resulting from lead poisoning. The Childhood Lead Poisoning Prevention Branch administers the department's lead poisoning prevention services for children with a budget of $9.5 million.

Assemblymember Honda has been informed that while the Legislature has continued to fund this program through general fund moneys, the department has only identified a small number of lead poisoned children and that many children remain untested and untreated. Further, the Assemblymember is concerned that the program is not eliminating childhood lead poisoning as was intended when the program was established.

Audit Scope And Objectives

This audit by the Bureau of State Audits will provide independently developed and verified information relative to the Childhood Lead Poisoning Prevention Branch:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. Determine whether the department has a current strategic plan with goals and performance measures for the program and whether the plan adheres to the Childhood Lead Poisoning Prevention Act of 1991;

3. Review the processes the department employs to fulfill its mission and assess whether they are efficient and effective in meeting goals;

4. Determine how the department screens children to identify cases of lead poisoning, investigates the cases, applies or recommends corrective treatment and action, and follows up on cases identified;

5. Determine how the department uses the information obtained from the cases to prevent other lead poison situations;

6. Review the program costs involved in administration, research, tests, and treatments for lead poisoning, and determine whether the costs are appropriate;

7. Review how funds and equipment are allocated to counties and other local prevention programs and determine if the procedures are consistently applied;

98118 Board of Equalization and Franchise Tax Board Audit Programs

Assemblymember Charles Poochigian requested an audit of the Board of Equalization (BOE) and Franchise Tax Board (FTB) audit programs. Specifically, Assemblymember Poochigian is interested in determining the accuracy and reliability of reports provided to the Legislature by these two entities regarding the costs and benefits of their respective audit programs.

Background

Since the 1992-93 budget cycle, the Legislature has added 273 audit positions to the BOE and added 167 audit positions to the FTB. Many of these increases in staff occurred during a period of fiscal difficulty in the State when most agencies were absorbing reductions to the staff and budget. According to Assemblymember Poochigian, the and BOE and FTB justified increases in their budgets by indicating that the State would gain five dollars for every one dollar spent on their audit function. Therefore, the State could actually increase its revenue by increasing the size and budget of the audit functions within the tax agencies.

In 1996, the Legislative Analyst's Office (LAO) questioned the accuracy and reliability of the costs and benefits of the audit program claimed by the BOE and FTB. The Supplemental Report of the 1997-98 Budget Act required the BOE and the FTB to submit reports to the Legislature by November 1, 1997, regarding the costs and benefits of their respective audit programs.

The BOE and the FTB submitted their reports to the Legislature on October 31, 1997, and December 23, 1997, respectively. Nevertheless, Assemblymember Poochigian believes that the issue of the costs and benefits of the audit programs has not been resolved because the information contained in the reports has not been reviewed or audited by an independent entity.

Audit Scope And Objectives

This audit by the Bureau of State Audits will provide independently developed and verified information relative to the costs and benefits of the BOE and FTB audit programs and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. Determine whether the two departments have documentary evidence of their programs' costs and benefits;

3. Review and assess the methodology used by the two entities to calculate their programs' costs and benefits;

4. Determine whether all costs are properly calculated and included in the cost benefit ratio; and

5. Review and assess the accuracy and reliability of the reports provided to the Legislature.

98120 Los Angeles Metropolitan Transportation Authority – Ethanol Buses

Assemblymember Scott Wildman has requested an audit of the financial aspects and current operational condition of the Los Angeles County Metropolitan Transportation Authority's (LAMTA) alcohol-fueled bus fleet. Specifically, Assemblymember Wildman is concerned about the LAMTA's decision to convert its alcohol-fueled bus fleet to diesel fuel and requests an analysis to determine whether the use of public funds to convert these buses is justified.

Background

The LAMTA was established in 1993 by state law as the result of the merger of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District. The LAMTA is governed by a 14-member board of directors and it oversees all regional bus and rail operations; plans and constructs a countywide rail system; develops transportation policies and a long-range plan; programs federal, state, and local revenues for public transit, transportation demand management, bikeways, and highway projects of Los Angeles County; and coordinates activities among the county's many transportation agencies.

According to Assemblymember Wildman, the LAMTA has accumulated 330 buses that were either purchased or converted to operate on alcohol fuel. The LAMTA plans to convert these alcohol-fueled buses to operate on diesel fuel because of fleet defects. Assemblyman Wildman is concerned with how LAMTA managed this issue and whether the costs related to the conversion are justified.

Audit Scope And Objectives

This audit by the Bureau of State Audits will provide independently developed and verified information relative to the LAMTA and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. Review the purchase agreement(s) between the LAMTA and the vendor(s) that delivered the alcohol-fueled buses to determine possible recourse for defective alcohol-fueled buses;

3. Evaluate the LAMTA's policies, procedures, and practices related to pursing contractual warranty claims against vendors or manufacturer(s) and whether the agency took appropriate action in a timely manner;

4. Evaluate the LAMTA's alcohol-fueled bus fleet maintenance, repair, and operational practices and determine if the LAMTA complied with the manufacturer's recommended maintenance, rebuilding, and operational procedures; and

5. Determine the cost related to converting the alcohol-fueled bus fleet to diesel and compare it to other options available (such as, selling the buses and purchasing others).

98124 California Department of Education – Vocational Education

Senator Richard Rainey has requested an audit to determine whether the California Department of Education (department) is complying with its duties and provisions of the federal Carl D. Perkins Vocational and Applied Technology Act (P.L. 101-392). The senator requests our review to include examining expenditures and activities in the vocational education program before and after the department's reorganization.

Background

The State of California receives funding for vocational education programs from the federal government under the Carl D. Perkins Vocational and Applied Technology Act (Perkins Act). The California Department of Education (department) and the Chancellor's Office of California Community Colleges use the funds to develop and expand the academic and vocational skills of students in grades K-12 and at the community colleges.

During fiscal year 1996-97, the State received $113 million in vocational education funds, of which the department received approximately 58 percent. Federal regulations require the State to submit a Vocational Education State Plan (state plan) that outlines the objectives and activities of its vocational education programs. The department acts as the lead and is responsible for preparing the state plan and submitting the application for funds to the United States Department of Education.

Senator Rainey is concerned about the services the department is providing with the federal funds from the Perkins Act and with types and amounts of administrative expenses used in connection with these federal funds. Further, Senator Rainey is interested in the effect the department's recent reorganization had on the types of services provided and administrative expenses incurred.

Audit Scope And Objectives

This audit by the Bureau of State Audits will provide independently developed and verified information relative to the vocational education grant(s) and would:

1. Review and evaluate the laws, rules, and regulations relevant to the issues;

2. For fiscal years 1996-97 and 1997-98, examine the grant amounts received and expenditures made and determine if the expenditures were appropriate, reasonable, and for services allowed under the Perkins Act;

3. Review the administrative expenses and professional development activities incurred in connection with the vocational education program and determine whether they are allowed by the federal regulations and the approved state plan; and

4. Examine the administrative services and costs for the program before the department's reorganization and compare them to the current services and costs to assess the effect of the reorganization.

Audits Held or Withdrawn

97126 City of Vallejo's Landscape Maintenance District Program

Assemblymember Valerie Brown requested the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit of the City of Vallejo's Landscape Maintenance District Program. Specifically, Assemblymember Brown is concerned over the City of Vallejo's use of landscape maintenance district funds.

Background

The City of Vallejo, with a population of approximately 109,000 (1990 census), is located in Solano County. City governments are responsible for making and enforcing within its limits all local, police, sanitary, and other ordinances and regulations. A city government is also responsible for the government of the city police force, any sub-governments, conduct of city elections, and specified matters with regard to its employees. Within certain constraints, cities have the authority to impose taxes and property-related assessments, fees, and charges in order to provide services.

In 1978, Proposition 13 reduced a local government's ability to levy general taxes. This caused an increase in the use of special assessments, such as for landscape maintenance districts, as a means for local governments to pay for projects or services that benefited specific properties. Proposition 218, which passed in 1996, limits the assessments that may be charged to property owners to only the proportional benefits they receive. General benefits of a project or service, if any, must be paid for by general revenues. Local governments must ensure that no property owner's assessment is greater than the cost to provide the service to the owner's property.

Some of the City of Vallejo's residents have raised questions about those the city operates landscape maintenance districts, and have filed a lawsuit against the city. The lawsuit was filed because a homeowners' association believes the city is circumventing the law by using landscape maintenance district funds for other purposes, as well as charging excessive fees against the district account to siphon money into unrestricted funds.

98101 Stephen P. Teale Data Center's Legal Expenditures

The Supplemental Report of the 1997 Budget Act contained a request for an audit of the Stephen P. Data Center's (Data Center) expenditures for legal services. Specifically, the request asks the Bureau of State Audits to determine the basis for the legal service expenditures, and specific actions taken by the Data Center to reduce such costs. Finally, the request calls for identifying the steps that the Data Center should take to reduce its exposure to litigation.

Background

The Data Center is one of the State's two general purpose data centers. Its mission is to actively assist state agencies in meeting their business objectives by cost-effectively providing information technology services. Its costs are reimbursed by its over 200 client state agencies. According to the Legislative Analyst's Office (LAO), the Data Center's costs for legal services has been substantially increasing over the past two years. The LAO also reported that nearly a third of the costs for fiscal year 1995-96 were from services provided by the Department of Justice (DOJ) and the other two thirds are from external legal services.

Legal services for the State are provided by three primary sources: the DOJ, state agency in-house counsel, and private outside counsel. Under the direction of the attorney general, the DOJ provides legal services to state and local agencies as well as enforces state laws, and provides support services to local law enforcement agencies. In general, the law requires that state agencies use the attorney general as their legal counsel; however, with written consent by the attorney general, agencies may utilize other state or private counsel for legal services.

Agencies obtaining written consent from the attorney general are also required to obtain approval from the Department of General Services' Office of Legal Services if they use private counsel. Legal services contracts are not subject to competitive bidding or advertising.

98103 Los Angeles County Metropolitan Transportation Authority

Assemblymember Kevin Murray requested the Joint Legislative Audit Committee to direct the Bureau of State Audits to conduct an audit of the financial aspects and current operational condition of a fleet of approximately 200 methanol-fueled buses acquired by the Los Angeles County Metropolitan Transportation Authority. Assemblymember Murray is concerned that approximately 140 of these buses may be sitting at a maintenance facility because they have been rendered inoperable by the methanol fuel they were manufactured to use.

Background

The Los Angeles County Metropolitan Transportation Authority (MTA) was established in 1993 by state law as the result of the merger of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District. The MTA is governed by a 14-member board of directors and it oversees all regional bus and rail operations; plans and constructs a countywide rail system; develops transportation policies and a long-range plan; programs federal, state, and local revenues for public transit, transportation demand management, bikeways, and highway projects of Los Angeles County; and coordinates activities among the county's many transportation agencies.

According to Assemblymember Murray, the Los Angeles County MTA acquired over 200 methanol-fueled buses over the last few years, which were rendered inoperable by the fuel they were manufactured to use. As a result, the Los Angeles County MTA has had to convert the buses and Assemblymember Murray claims a large portion of the buses are still inoperable.

98111 Department of Toxic Substances Control – Regulatory Structure Update

Assemblymember Virginia Strom-Martin requested the Joint Legislative Audit Committee direct the Bureau of State Audits to conduct an audit of the Department of Toxic Substances Control's Regulatory Structure Update (RSU) project. Assemblymember Strom-Martin is concerned that activities related to the RSU project ma compromise the health and safety of communities in California.

Background

Within the California Environmental Projection Agency, the Department of Toxic Substances Control's (DTSC) mission is to protect the public health and environment from harmful exposure by regulating hazardous waste management and site mitigation activities and promoting the development and use of pollution prevention and waste minimization technologies. In conjunction with several other reform projects for hazardous waste management, the DTSC has undertaken the Regulatory Structure Update (RSU) project. This project is a comprehensive review intended to refocus California's system for identifying and regulating the management of hazardous waste. Ultimately, the DTSC plans to make recommendations for each area where California's program exceeds the federal Resource Conservation and Recovery Act program requirements to retain, modify, or eliminate the state standard.

98122 City and County of San Francisco Municipal Railway

Senator Quentin Kopp requested a fiscal audit of the City and County of San Francisco's Municipal Railway. Specifically, Senator Kopp is concerned about the fiscal management and oversight of the San Francisco Municipal Railway and results of recent reports.

Background

The San Francisco (city and county) Public Transportation Commission, which consists of five members appointed by the Mayor, govern the San Francisco Municipal Railway (Muni). The Muni has an operating budget of $280.8 million and has a fleet of about 1,000 vehicles consisting of subway-surface light-rail vehicles, electric trolley buses, diesel buses, cable cars, and historic streetcars.

The Muni, along with other city and county departments, has recently been under review by the 1997-98 San Francisco County Civil Grand Jury (grand jury). In its July 1998 report, the grand jury concluded that the Muni excessively used overtime. Senator Kopp is concerned that despite these findings and other objections raised by budget analysts from the San Francisco Board of Supervisors (board), the board recently approved a budget increase for fiscal year 1998-99.

Audit Follow-Up

After an audit is released, the agency is required to submit 60-day and 90-day follow-up reports, which detail their implementation of the recommendations made by the Bureau of State Audits to the State Auditor. Each budget year, the Bureau of State Audits releases the findings from the follow-up reports to the Senate and Assembly Budget Sub-Committees to assist in the formation of the state budget. This past year, the Joint Legislative Audit Committee sent requests to each of the agencies audited in 1997 to inquire about their implementation of the State Auditor's recommendations. The Joint Legislative Audit Committee received responses from the following agencies:

California Conservation Corps
California Community Colleges
California Department of Corrections
California Department of Education
California Commission on Teacher Credentialing
California State Lottery
Department of Fair Employment and Housing
Department of Food and Agriculture
Department of Forestry and Fire Protection
Department of General Services
Department of Motor Vehicles
Department of Parks and Recreation – Office of Historic Preservation
Department of Personnel Administration
Governor's Office of Emergency Services
Prison Industry Authority
Resources Agency of California
State Bar of California
University of California

Copies of the letters can be reviewed at the Joint Legislative Audit Committee Office.

Legislation Affecting the Bureau of State Audits

Dept. Of Justice Witness Protection Program (98024)

AB 1656 (Budget Bill) Chapter 324
Item 0820-101-0214, Provision 2 & 3

The Department of Justice shall establish, in consultation with the Bureau of State Audits, appropriate policies and procedures for the submittal and review of claims to the California Witness Protection Program. Of the amount appropriated in this item and the amount appropriated in Item 0820-001-0214, the department may expend up to $150,000 for the purposes of this provision and the administration of the California Witness Protection Program.

The Bureau of State Audits shall audit the Department of Justice's claims review process for the California Witness Protection Program to ensure that all criteria for program eligibility are met and shall report to the Legislature **by January 1, 1999**, and annually thereafter, on the results of its audits. The bureau shall also recommend changes to criteria for the program to ensure accountability as part of its annual report to the Legislature.

California Child Support Automation (98025)

AB 2779 Chapter 329

Section 10083 is added to the Welfare and Institutions Code:

(A) The Bureau of State Audits, in collaboration and consultation with the United States Department of Health and Human Services and the department, shall determine by May 1, 1999, which consortium systems' core child support applications are acceptable as federal Level I certifiable and in compliance with federal distribution requirements under Public Law 104-193. The Bureau of State Audits shall make its determination based on the federal law, procedures, and practices employed by the federal Office of Child Support Enforcement in certifying other states' systems. Consortia systems shall be held harmless for any variance from implementation of the federal distribution methodology resulting from policy directives issued by the department.

(B) The Bureau of State Audits shall submit its findings to the department, the Health and Welfare Agency Data Center, and the appropriate committees of the Legislature by **June 1, 1999**.

Section 10084 is added to the Welfare and Institutions Code:

(a) In the event that more than three of the consortia systems meet all of the requirements of Section 10083 no more than three shall be selected in addition to ARS. If three or fewer meet the requirements of Section 10083, each of the consortia systems shall be selected, subject to a decision of the consortia whether to proceed.

(b) The department, the Health and Welfare Agency Data Center, and the California District Attorneys Association shall jointly develop standards and criteria for the selection of the

consortia by December 1, 1998. In developing the standards and criteria, it is the intent of the Legislature that the following be considered:
(1) Capability of efficiently transferring case data and information between the consortia and to and from the state.
(2) Cost-effectiveness over a five-year operating cycle, including but not limited to a combination of development, operating, and modification costs.
(3) Scalability to the largest counties or functionality for the smallest counties.
(4) Effectiveness of tracking and managing child support program and processing outcomes.
(5) Ease of modification and upgrading.
(6) User friendliness such that user interface is intuitive and requires minimal training of staff.
(7) Availability of technical support.
(8) Ability to provide future Internet access.
(c) The department shall submit a copy of the standards and criteria developed pursuant to subdivision (b) to the appropriate committees of the Legislature by January 1, 1999.

Section 10085 is added to the Welfare and Institutions Code:
Within 21 days of the release of the Bureau of State Audits' Level I certification determination the department and the Health and Welfare Agency Data Center, in consultation with the Bureau of State Audits, shall select the three consortia systems.

Dept. Of Health Services Airport Residency Review Program (98026)

AB 1656 (Budget Bill) Chapter 324
Item 4260-001-0001, Provision 10

The Bureau of State Audits shall provide the fiscal committees and appropriate policy committees of the Legislature with an evaluation of the port-of-entry projects, including the California Airport Residency Review Program, as conducted by the State Department of Health Services, by **April 1, 1999**. The evaluation shall, at a minimum, review the protocols, procedures, and methods used by the investigators to identify and determine potential beneficiary fraud in the Medi-Cal Program, provide a demographic profile of the individuals questioned as well as those who are investigated, measure the cost-benefit ratio of projects, including a summary of the funds collected and any cost avoidance assumptions, and analyze the overall effectiveness of the projects at identifying fraud.

Department of Toxic Substances Control Generator Fee Structure (98027)

AB 2067 Chapter 880
SEC. 14.
(a) On or before **June 30, 1999**, the Bureau of State Audits, as established by Section 8543 of the Government Code, in consultation with, and with the cooperation of, the Department of Toxic Substances Control, the California Certified Unified Program Agency (CUPA) Forum, and the State Board of Equalization, shall evaluate the current generator fee structure prescribed in Section 25205.5 of the Health and Safety Code and the hazardous waste fees charged by Certified Unified Program Agencies pursuant to Section 25404.5 of the Health and Safety Code and shall prepare a report to the Legislature recommending appropriate changes to that structure in order to accomplish the following objectives:

(1) Facilitate and encourage waste reduction and recycling, including both onsite and offsite recycling, and discourage the uncontrolled release and dispersion of hazardous wastes into the environment.

(2) Provide a fair and equitable basis to credit or reduce generator fees based on the payment of fees to other state and local agencies that are authorized to perform hazardous waste generator regulatory functions in lieu of the department. As part of the evaluation and report, the Bureau of State Audits shall do all of the following:

(A) Analyze the generator fees charged pursuant to Section 25205.5 of the Health and Safety Code to determine what services and benefits the department provides to generators and the public for that fee and what other activities, if any, are supported by that fee.

(B) Analyze the hazardous waste fees charged pursuant to Section 25404.5 of the Health and Safety Code to determine what services and benefits the Certified Unified Program Agencies provide to generators and the public for those fees, on a fee-for-service basis, and what other activities, if any, are supported by these fees.

(C) Determine if generators are being charged for duplicative or similar services and benefits by any of these fees.

(D) Evaluate and recommend where economies and equity can be achieved in the provision of services and benefits to generators and the public and the total amount of fees charged to generators.

(3) Develop a simple generator fee structure providing a reasonable, equitable, and appropriate allocation of fees for services and benefits provided by the department and CUPAs or any other entity supported by these fees.

(4) Provide sufficient revenues to support the department's regulatory programs which rely on the hazardous waste generator fees for funding while minimizing the financial impact on the state's industries. If the Bureau of State Audits' recommendations would result in generator fee revenues being reduced to less than 45 percent of the annual total revenues deposited in the Hazardous Waste Control Account in the General Fund, then the bureau shall also recommend an alternative funding source or sources to compensate for the revenue reduction.

(5) Maximize the collection of generator fee revenues which are due and payable to the state.

(b) For purposes of accomplishing the objective specified in paragraph (5) of subdivision(a), the Bureau of State Audits, in consultation with and with the cooperation of the Department of Toxic Substances Control, the California CUPA Forum, and the State Board of Equalization, shall evaluate the generator fees that are due and payable to the state, as compared to actual generator fee revenues collected, and the reasons for any underpayment of generator fees which are due and payable, and shall include in the generator fee structure report required by the section recommendations to simplify the generator fee system and maximize the payment and collection of these fees.

Audits Released by the Bureau of State Audits During the 1998 Year

Discretionary Audits:

98109 **County Emergency Medical Services Funds**: Although Counties Properly Allocate Money to Their EMS Funds, County Policies and Legislative Requirements Unnecessarily Limit Reimbursements to Emergency Medical Care Providers 1-21-99

97107 **Los Angeles Community College District:** Proposed Reforms Have Not Fully Addressed Past Problems and Create a New Set of Challenges 12-23-98

98112 **California's Drinking Water:** State and Local Agencies Need to Provide Leadership to Address Contamination of Groundwater by Gasoline Components and Additives 12-17-98

97123 **Lahontan Regional Water Quality Control Board**: Has Not Accomplished All of Its Regulatory Work and Has Not Always Vigorously Acted Against Water Quality Violators 11-12-98

98119 **Los Angeles County Metropolitan Transportation Authority:** Its Plan for Managing Debt Is Reasonable 10-20-98

97108 **Office of Statewide Health Planning and Development**: The Cal-Mortgage Program Does Not Minimize the State's Financial Risk When Insuring Health Facility Debt 10-14-98

98102 **Prison Industry Authority:** Its Outside Purchase of Goods and Services Is Neither Well Planned nor Cost Effective 9-24-98

97125 **California Department of Corrections:** The Cost of Incarcerating Inmates in State-Run Prisons Is Higher Than the Department's Published Cost 9-15-98

97127 **Marks-Roos Bond Act Borrowings:** Several Cities Misused the Program and Some Financed Risky Projects Which May Result in Investor Losses 9-9-98

97124 **Cajon Valley Union School District:** The District Needs to Improve Its Managerial Oversight and Accountability 8-13-98

97119 **Los Angeles County:** Millions Spent on Courthouse Projects That May Never Be Built 7-14-98

97114 **South Coast Air Quality Management District:** The District Should Establish a More Equitable Emission Fee Structure and Process Permits More Promptly 7-9-98

98107 **Los Angeles Metropolitan Transportation Authority:** Creating a Separate San Fernando Valley Authority Would Take a Split of Assets, Revenue, and Debt 7-7-98

98105 **Fair Political Practices Commission:** Although It Follows the Law, Improvements Are Needed in Enforcement and Technical Assistance 5-28-98

98106 **State Bar of California:** Financial Outlook for the Admissions Fund Is Not As Bleak As Portrayed 5-20-98

97115 **Los Angeles County:** The Office of AIDS Programs and Policy Can Improve Its Management of Grant Funds 5-13-98

97111 **Department of Alcoholic Beverage Control**: Weaknesses in Its Enforcement Program Leave It Vulnerable to Allegations of Unfair Practices 5-6-98

97118.1 **Department of Corporations:** To Optimize Health Plan Regulation, This Function Should Be Moved to the Health and Welfare Agency 5-5-98

97110 **Office of the Attorney General:** Its Office of Gaming Registration Should Protect Tax Documents More Rigorously and Improve Some Procedures 3-24-98

97116 **Health and Welfare Agency:** Lockheed Martin Information Management Systems Failed To Deliver and the State Poorly Managed the Statewide Automated Child Support System 3-18-98

97112 **Office of Real Estate Appraisers:** Improvements Are Needed in Complaint Processing, Personnel Practices, and in Some Licensing Procedures 3-17-98

97121 **Department of Mental Health:** Changes in State Hospital Security Measures Can Reduce Annual Costs While Maintaining Public Safety 3-12-98

97101 **Community Redevelopment Agencies:** Surplus Balances in Lower-Income Housing Funds Are Overstated, Suggesting a Need for More Statewide Oversight and Direction 3-11-98

97103 **Kern County:** Management Weaknesses at Critical Points in Its Child Protective Services Process May Also Be Pervasive Throughout the State 1-15-98

97102 **State Legal Contracts:** The State Could Reduce Its Reliance on Outside Counsel and Better Manage Contracts 12-23-97

Mandatory Audits:

98006 **State of California**: Treasurer's Cash Count as of June 30, 1998 12-22-98

97025 **Forensic Laboratories**: Many Face Challenges Beyond Accreditation to Assure the Highest Quality Services 12-15-98

98021 **California Public Utilities Commission:** It Does Not Know Its True Costs of Regulating Transportation Companies 12-08-98

98022 **Department of Transportation**: Seismic Retrofit Expenditures Comply With the Bond Act 12-01-98

98025 **Automated Child Support System:** Selection Interim System Appears Reasonable 11-19-98

98008 **State of California:** Statement of Securities Accountability of the State Treasurer's Office June 30, 1998 11-1-98

97015 **State Contracting:** The State Can Do More to Save Money When Acquiring Goods and Services 10-15-98

98005 **State of California:** Treasurer's Cash Count as of February 28, 1998 9-14-98

I98-2 **Investigations of Improper Activities** by State Employees February 1 Through June 30, 1998 9-2-98

98023 **Year 2000 Computer Problem:** Progress May Be Overly Optimistic and Certain Implications Have Not Been Addressed 8-27-98

98012 **Department of Health Services:** Drug Treatment Authorization Requests Continue to Increase 8-4-98

97002 **State of California:** Internal Control and Financial Compliance Audit for the Year Ended June 30, 1997 6-30-98

98018 **Los Angeles County:** The Future Holds Continuing Budget Challenges 4-30-98

I960143 **Investigative Report**: Conflicts of Interest, Acceptance of Prohibited Gifts, Improper Establishment of a Program, and Improper Deposit and Use of Funds at California State University, Dominguez Hills 4-21-98

97024 **Department of Developmental Services:** Regional Center Budgets Are Not Based on Needs, and Departmental Oversight Could Be Improved 4-14-98

95017 **Early Intervention Program**: Flaws Found in the 1997 Report on the Benefits of the Early Intervention Program 4-8-98

I960207 **Investigative Report:** Conflicts of Interest and Mismanagement of Federal and State Funds at the California Student Aid Commission 3-31-98

I98-1 **Investigations of Improper Governmental Activities** by State Employees: July 1, 1997, Through January 31, 1998 3-25-98

97019 **Los Angeles County:** Although the County Closed 1996-97 With a Surplus, 1997-98 Still Presents a Few Fiscal Pressures 2-26-98

97014 **California Transportation Commission and Department of Transportation:** The State's Use of Transportation Funds Generated by the 1989 Transportation Blueprint Legislation 2-24-98

98011 **Department of Health Services:** Drug Treatment Authorization Requests Continue To Increase 1-27-98

Appendix A

Joint Legislative Audit Committee
Authority, Rules and Procedures Adopted March 5, 1994

Authority

1. The Joint Legislative Audit Committee is created pursuant to Government Code Section 10501. The Committee shall consist of seven members of the Senate and seven members of the Assembly selected in the manner provided for in the Joint Rules of the Senate and Assembly. (G.C. 10502)

2. The Chair of the fiscal committee for the Senate and the Chair of the fiscal committee of the Assembly shall be members of the Joint Legislative Audit Committee. (Joint Rules of the Senate and Assembly, 37.3)

3. Four members from each house constitute a quorum and the number of votes necessary to take action on any matter. (Joint Rules of the Senate and Assembly, 37.3)

4. The Committee is authorized to make rules governing its own proceedings, (G.C. 10503) and shall elect its own chair. (G.C. 10502)

5. The State Auditor shall conduct any audit of a state or local governmental agency that is requested by the Committee to the extent that funding is available and in accordance with the priority established by the Committee. (G.C. 8546.1)

6. Any member of the Legislature may submit requests for audits to the Committee for its consideration and approval. Any audit request approved by the Committee shall be forwarded to the State Auditor as a Committee request. (G.C. 8546.1)

Rules and Procedures

7. Upon receipt of an audit request from a member of the Legislature, the Chair shall transmit the request to the State Auditor for the purpose of determining the feasibility, scope and cost of performing the proposed audit.

8. The State Auditor will prepare an analysis of the audit request, including the feasibility, scope and cost of the audit, and transmit the analysis to the Committee Members.

9. No action shall be taken on an audit request until such time as the Committee has reviewed the request and the State Auditor's analysis in an open meeting of the Committee. The Legislator requesting the audit, or his/her authorized representative, will be invited to appear at the hearing to submit reasons for approving his/her request.

10. The Committee shall consider each request and either: 1) approve it, 2) deny it, or 3) place it on hold for future consideration. The Chair shall notify each requester of the Committee's decision after the open meeting.

11. For all approved audits, the Committee shall set priorities for the State Auditor considering the extent that funding is available.

12. To assist the Committee in ranking and prioritizing approved audits, the State Auditor shall periodically provide a schedule of available funding for request audits throughout the fiscal year.

13. An audit request placed on hold by the committee and not acted upon before the end of the regular two-year session of the Legislature shall automatically be deemed denied. The Chair shall contact each requester whose audit request has been thus denied and notify them that the audit request can be resubmitted to the Committee during the next regular session.

14. Notwithstanding Rule 9, an audit request of an urgent nature received during interim or recess may be approved with the concurrence of the Chair and Vice Chair, provided that the audit's cost shall not exceed $50,000 and that the audit shall not commence until five working days after the Committee members have been notified in writing of the audit's approval.

a. Audit requests in excess of $50,000 received during interim require approval through an open meeting of the Committee as described in Rule 9.

b. If any Committee member objects to an audit request approved pursuant to Rule 14 within the five working days, the audit shall be placed on hold until the next regular open meeting of the Committee.

15. The State Auditor shall conduct all audits pursuant to Government Code Section 8546 and release the completed audit report to the Governor, Legislature, members of the Joint Legislative Audit Committee, other Legislative Committees and the requester.

16. Any Committee member may request a public hearing to discuss the State Auditor's completed report. Upon receiving such a request, the Chair shall schedule a public hearing at a reasonable time and location and inform each Committee member. The official whose office is the subject of the audit, the requester, the State Auditor or any other person may be summoned by the Chair to appear at the hearing and provide testimony.

17. The Chair may appoint subcommittees and hold hearings as a full committee or subcommittee concerning state financial and program issues and conduct business at any place within the state, during the sessions of the Legislature or any recess thereof, and in the interim period between sessions.

18. The Committee, subcommittees, Committee members and their staff may review State Auditor reports and take action thereon, ascertain facts and perform other special studies as directed by the Chair.

19. The Committee may sponsor whatever legislation it deems appropriate to carry out its mission and testify during Legislative deliberations on these measures.

20. The Committee may track legislation affecting the funding or workload of the State Auditor or Joint Legislative Audit Committee and testify as needed. The Committee may also participate in budget and fiscal hearings regarding the State Auditor's budget and funding.

21. Pursuant to Joint Rules 37.4 and 37.5, the Committee shall review all bills or resolutions assigning a study to the Committee or State Auditor and request an appropriation to fund the audit or waive this requirement as appropriate.

Appendix B

Government Code Sections Relating to the Joint Legislative Audit Committee

10500. It is the desire of the Legislature to create the Office of the Auditor General, whose primary duties shall be to perform performance audits as may be requested by the Legislature. The authority of the office under the direction of the Joint Legislative Audit Committee is confined to examining and reporting and is in no way to interfere with adequate internal audit to be conducted by the executive branch of the government or the state audit or other audits required by statute to be performed by the State Auditor. The Legislature also finds that a significant portion of the state budget consists of subventions to local governments and, therefore, oversight capability necessary to determine funding priorities and to evaluate the efficiency and necessity of state-supported local programs and state programs administered by local governments.

10501. The Joint Legislative Audit Committee is hereby created. The committee shall determine the policies of the Auditor General, ascertain facts, review reports and take action thereon, and make reports and recommendations to the Legislature and to the houses thereof concerning the state audit, the revenues and expenditures of the State, its departments, subdivisions, and agencies whether created by the Constitution or otherwise, and such other matters as may be provided for in the Joint Rules of the Senate and Assembly. The committee has a continuing existence and may meet, act, and conduct its business at any place within this State, during the sessions of the Legislature or any recess thereof, and in the interim period between sessions.

10502. The committee shall consist of seven Members of the Senate and seven Members of the Assembly who shall be selected in the manner provided for in the Joint Rules of the Senate and Assembly. The committee shall elect its own chairman. Vacancies occurring in the membership of the committee between general sessions of the Legislature shall be filled in the manner provided for in the Joint Rules of the Senate and Assembly. A vacancy shall be deemed to exist as to any member of the committee whose term is expiring whenever such member is not reelected at the general election

10503. The committee is authorized to make rules governing its own proceedings and to create subcommittees from its membership and assign to such subcommittees any study, inquiry, investigation, or hearing which the committee itself has authority to undertake or hold. The provisions of Rule 36 of the Joint Rules of the Senate and Assembly relating to investigating committees shall apply to the committee and it shall have such powers, duties and responsibilities as the Joint Rules of the Senate and Assembly shall from time to time prescribe, and all the powers conferred upon committees by Section 11, Article IV, of the Constitution.

10504. After recommendation by the committee, the Auditor General shall be selected by concurrent resolution and shall serve until his or her successor is selected or until his or her removal by concurrent resolution. When the Legislature is not in session, the committee may suspend the Auditor General until the Legislatures reconvenes. When there is a vacancy in the office of Auditor General, the Chairman of the Joint Legislature Audit Committee shall select an acting Auditor General until an Auditor General is

selected by the Legislature. The committee shall fix the salary of the Auditor General, deputies, and staff. The funds for the support of the committee shall be provided from the Contingent Funds of the Assembly and Senate in the same manner that those funds are made available to other joint committees of the Legislature.

10520. The Auditor General shall only conduct audits and investigative audits approved by the Joint Legislative Audit Committee. Any provision of law directing the Auditor General to conduct an audit or investigative audit shall be deemed a request to the Joint Legislative Audit Committee to direct the Auditor General to undertake that audit or investigative audit. Once an audit or investigative audit is approved, the Auditor General shall complete the audit or investigative audit in a timely manner and in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" issued by the Comptroller General of the United States. Immediately upon completion of an audit, the Auditor General shall transmit a copy of the audit report to each member of the Joint Legislative Audit Committee.

10521. The Auditor General, prior to his or her selection, shall possess a combination of education and experience which in the opinion of the Legislature is necessary to perform the duties of his or her office.

10522. The Auditor General shall be paid the salary fixed by the Joint Legislative Audit Committee and shall be repaid all actual expenses incurred or paid by him or her in the discharge of his or her duties.

10523. The Auditor General may employ and fix the compensation, in accordance with Section (4) of Article VII of the Constitution, of such professional assistants and clerical and other employees as he or she deems necessary for the effective conduct of the work under his or her charge. The Auditor General and his or her employees are legislative employees for purposes of Sections 20364, 11032, 11033, 11041, and 18990, and for purposes of the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" issued by the Comptroller General of the United States.

10524. The permanent office of the Auditor General shall be in Sacramento, where he or she shall be provided with suitable and sufficient offices. When in his or her judgment the conduct of his or her work requires, he or she may maintain offices at other places in the state.

10525. The Auditor General shall not destroy any papers or memoranda used to support a completed audit sooner than three years after the audit report is released to the public. All books, papers, records, and correspondence of the Auditor General's office pertaining to its work are legislative records subject to Article 3.5 (commencing with Section 9070) of Chapter 1.5 of Part 1 and shall be filed at any of the regularly maintained offices of the Auditor General, except that none of the following items shall be released to the public by the Auditor General or his or her employees:

Personal papers and correspondence of any person receiving assistance from the Auditor General when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become legislative records upon the order of the Auditor General or the Legislature or if the written request is withdrawn.

Papers, correspondence, or memoranda pertaining to any audit or investigation not completed, when in the judgment of the Auditor General, disclosure of those papers, correspondence, or memoranda will impede the audit or investigation.

Papers, correspondence, or memoranda pertaining to any audit or investigation which has been completed, which papers, correspondence, or memoranda are not used in support of any report resulting from the audit or investigation. The amendment of this section made at the 1981-82 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

10526. It is a misdemeanor for the Auditor General or any employee or former employee of the office to divulge or make known in any manner not expressly permitted by law to any person not employed by the Office of the Auditor General, any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition is also applicable to any person or business entity which is contracting with or has contracted with the Auditor General and to the employees and former employees of that person or business entity or the employees of any state agency or public entity which has assisted the Auditor General in the course of any audit or investigative audit or which has been furnished a draft copy of any report for comment or review.

10527. (a) Notwithstanding any other provision of law, the Auditor General during regular business hours shall have access to, and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property, of any agency of the state, whether created by the Constitution or otherwise, and any public entity, including any city, county, and special district which receives state funds, and it shall be the duty of any officer or employee of any agency or entity, having those records or property in his or her possession or under his or her control, to permit access to, and examination and reproduction thereof, upon the request of the Auditor General or his or her authorized representative.

(b) For the purposes of access to and examination and reproduction of the records and property described in subdivision (a), an authorized representative of the Auditor General is an employee or officer of the agency or public entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the agency or public entity. For the purpose of conducting any audit or investigation, the Auditor General or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a). This subdivision does not apply to records compiled pursuant to Chapter 1 (commencing with Section 10200).

(c) Any officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor.

10527.1. Where any specific statute bars the access of the Auditor General or the Joint Legislative Audit Committee to any record, the Joint Legislative Audit Committee, by approval of a majority of the members of the committee, may authorize that the Auditor General and the Joint Legislative Audit Committee be granted access, with the right to examine and reproduce, to the records if that access is for the purpose of an audit authorized by the committee to the extent permitted by federal law. That authorization shall include safeguards to prohibit disclosure of any information which identifies by name or address any public social service recipient, or any other record which is protected by law.

10527.2. The Auditor General shall not have access to arrest records of the Department of Justice without the specific authorization of the Joint Legislative Audit Committee and the Attorney General. It is the intent of this section that the Attorney General comply with such a request if it is clear that the information is an essential element of an approved audit and the information will not be used for commercial or political purposes.

10527.3. It shall be a misdemeanor for the Auditor General or any employee of the Auditor General, a member of the Joint Legislative Audit Committee or any employee of the committee to release any information received pursuant to Section 10850 of the Welfare and Institutions Code or Section 10527.1 or 10527.2 of this code, that is otherwise prohibited by law to be disclosed.

10527.4. Nothing in Section 10527.1, 10527.2 or 10527.3, nor any other provision of law shall limit the authority of the Joint Legislative Audit Committee to subpoena records under the authority granted to the committee by the Constitution and the Joint Rules of the Senate and Assembly.

10528. The Auditor General shall make special audits and investigations, including performance audits, of any state agency whether created by the California Constitution or otherwise, and any public entity, including any city, county, and special district which receives state funds, as requested by the Legislature or any committee of the Legislature.

Appendix C

Joint Rules

Joint Legislative Audit Committee

37.3. The Joint Legislative Audit Committee is created pursuant to the Legislature's rulemaking authority under the California Constitution, and pursuant to Chapter 4 commencing with Section 10500) of Part 2 of Division 2 of Title 2 of the Government Code. The committee shall consist of seven Members of the Senate and seven Members of the Assembly, who shall be selected in the manner provided for in these rules. Notwithstanding any other provision of these rules, four members from each house constitute a quorum of the Joint Legislative Audit Committee and the number of votes necessary to take action on any matter. The Chairman or Chairwoman of the Joint Legislative Audit Committee, upon receiving a request by any Member of the Legislature or committee thereof for a copy of a report prepared or being prepared by the Bureau of State Audits, shall provide the member or committee with a copy of the report when it is, or has been, submitted by the Bureau of State Audits to the Joint Legislative Audit Committee.

Study or Audits

37.4. (a) Notwithstanding any other provision of law, the Joint Legislative Audit Committee shall establish priorities and assign all work to be done by the Bureau of State Audits.

(b) Any bill requiring action by the Bureau of State Audits shall contain an appropriation for the cost of any study or audit.

(c) Any bill or concurrent, joint, Senate, or House resolution assigning a study to the Joint Legislative Audit Committee or to the Bureau of State Audits shall be referred to the respective rules committees. Before the committees may act upon or assign the bill or resolution, they shall obtain an estimate from the Joint Legislative Audit Committee of the amount required to be expended to make the study.

Waiver

37.5. Subdivision (b) of Rule 37.4 may be waived by the Joint Legislative Audit Committee. The chairman or chairwoman of the committee shall notify the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel in writing when subdivision (b) of Rule 37.4 has been waived. If the cost of a study or audit is less than one hundred thousand dollars ($100,000), the chairman or chairwoman of the committee may exercise the committee's authority to waive subdivision (b) of Rule 37.4.

Appendix D

Government Code Sections 8546- 8546.8

8546. It is the intent of the Legislature that the Bureau of State Audits have the independence necessary to conduct all of its audits in conformity with "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants, free from influence of existing state control agencies that could be the subject of audits conducted by the bureau. Therefore, all of the following exclusions apply to the office:

(a) Notwithstanding Section 19790, the State Auditor shall establish an affirmative action program that shall meet the criteria and objectives established by the State Personnel Board and shall report annually to the State Personnel Board and the commission.

(b) Notwithstanding Section 12470, the State Auditor shall be responsible for maintaining its payroll system. In lieu of audits of the uniform payroll system performed by the Controller or any other department, the office shall contract pursuant to subdivision (e) of Section 8544.5 for an annual audit of its payroll and financial operations by an independent public accountant.

(c) Notwithstanding Sections 11730 and 13292, the State Auditor is delegated the authority to establish and administer the fiscal and administrative policies of the bureau in conformity with the State Administrative Manual without oversight by the Department of Finance, the Office of Information Technology, or any other state agency.

(d) Notwithstanding Section 11032, the State Auditor may approve actual and necessary traveling expenses for travel outside the state for officers and employees of the bureau.

(e) Notwithstanding Section 11033, the State Auditor or officers and employees of the bureau may be absent from the state on business of the state upon approval of the State Auditor or Chief Deputy State Auditor.

(f) Sections 11040, 11042, and 11043 shall not apply to the Bureau of State Audits. The State Auditor may employ legal counsel under those terms that he or she deems necessary to conduct the legal business of, or render legal counsel to, the State Auditor.

(g)The provisions and definitions of Section 11342 shall not be construed to include the Bureau of State Audits. The State Auditor may adopt regulations necessary for the operation of the bureau pursuant to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3), but these regulations shall not be subject to the review or approval of the Office of Administrative Law.

(h)The State Auditor shall be exempt from all contract requirements of the Public Contract Code that require oversight, review, or approval by the Department of General Services or any other state agency. The State Auditor may contract on

behalf of the State of California for goods and services that he or she deems necessary for the furtherance of the purposes of the bureau.

(i) (1) Subject to Article VII of the California Constitution, the State Auditor is delegated the authority to establish and administer the personnel policies and practices of the Bureau of State Audits in conformity with Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 without oversight or approval by the Department of Personnel Administration.

(2) At the election of the State Auditor, officers and employees of the bureau may participate in benefits programs administered by the Department of Personnel Administration subject to the same conditions for participation that apply to civil service employees in other state agencies. For the purposes of benefits programs administration only, the State Auditor is subject to the determinations of the department. The Bureau of State Audits shall reimburse the Department of Personnel Administration for the normal administrative costs incurred by the Department of Personnel Administration and for any extraordinary costs resulting from the inclusion of the bureau employees in these state benefit programs.

8546.1. The State Auditor shall conduct financial and performance audits as directed by statute. The State Auditor may conduct these audits of any state agency as defined by Section 11000, whether created by the California Constitution or otherwise, and any local governmental agency, including any city, county, and school or special district. However, the State Auditor shall not audit the activities of the Milton Marks Commission on California State Government Organization and Economy or the Legislature to assure compliance with government auditing standards. The State Auditor shall conduct any audit of a state or local governmental agency or any other publicly created entity that is requested by the Joint Legislative Audit Committee to the extent that funding is available and in accordance with the priority established by the committee with respect to other audits requested by the committee. Members of the Legislature may submit requests for audits to the committee for its consideration and approval. Any audit request approved by the committee shall be forwarded to the State Auditor as a committee request. The State Auditor shall complete any audit in a timely manner and in accordance with the "Government Auditing Standards" published by the Comptroller General of the United States. Immediately upon completion of the audit, the State Auditor shall transmit a copy of the audit report to the commission. Not later than 24 hours after delivery to the commission, the commission shall deliver the report to the Legislature, appropriate committees or subcommittees of the Legislature, and the Governor. Once transmitted to these parties, the report shall be made available to the public.

8546.3. The State Auditor shall examine and report annually upon the financial statements otherwise prepared by the executive branch of the state so that the Legislature and the public will be informed of the adequacy of those financial statements in compliance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal Year. In making that examination, the State Auditor may make the audit examination of accounts and records, accounting procedures, and internal auditing performance that he or she determines to be necessary to disclose all material facts necessary to proper reporting in accordance with the federal Single Audit Act of 1984 (31 U.S.C. Section 7501 et seq.) and the purposes set forth in Section 8521.5.

8546.4. (a) The State Auditor shall annually issue an auditor's report based upon the general purpose financial statements included in the Controller's annual report that is submitted to the Governor pursuant to Section 12460. The auditor's report shall be in accordance with the "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants.

(b) The State Auditor, in the performance of this annual audit, may examine all the financial records, accounts, and documents of any state agency as defined by Section 11000.

(c) The State Auditor shall rely, to the maximum extent possible, upon the audits performed by the Controller, the Department of Finance, internal auditors of state agencies, and independent contractors. The Director of Finance shall be responsible for coordinating and providing technical assistance to the internal auditors of state agencies. Nothing in this article is intended to reduce or restrict the operations of internal auditors whose review of internal financial and administrative controls of state agencies is essential for coordinated audits.

(d) State agencies receiving federal funds shall be primarily responsible for arranging or federally required financial and compliance audits. State agencies shall immediately notify the Director of Finance, the State Auditor, and the Controller when they are required to obtain federally required financial and compliance audits. The Director of Finance, the State Auditor, and the Controller shall coordinate the procurement by state agencies, including any negotiations with cognizant federal agencies, of federally required financial and compliance audits.

(e) To prevent duplication of the annual audit conducted by the State Auditor pursuant to subdivision (a), except for those state agencies that are required by state law to obtain an annual audit, no state agency shall enter into a contract for a financial or compliance audit without prior written approval of the Controller and the Director of Finance, which approval shall state the reason for the contract and shall be filed with the State Auditor at least 30 days prior to the award of the contract. No funds appropriated by the Legislature shall be encumbered for the purpose of funding any contract for an audit that duplicates the annual financial audit conducted by the State Auditor.

(f) Notwithstanding any other provision of this article, nothing in this section shall be construed to limit, restrict, or otherwise infringe upon the constitutional or statutory authority of the Controller to superintend the fiscal concerns of the state.

(g) Notwithstanding any other provision of this article, nothing in this section shall be construed to limit, restrict, or otherwise infringe upon the statutory authority of the Director of Finance to supervise the financial and business policies of the state.

8546.5. The Director of Finance, in coordinating the internal auditors of state agencies, shall ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

8546.6. The State Auditor, in connection with any audit or investigation conducted pursuant to this chapter, shall be deemed to be a department head for the purposes of Section 11189.

8546.7. Notwithstanding any other provision of law, every contract involving the expenditure of public funds in excess of ten thousand dollars ($10,000) entered into by any state agency, board, commission, or department or by any other public entity, including a city, county, city and county, or district, shall be subject to the examination and audit of the State Auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the contract. Every contract shall contain a provision stating that the contracting parties shall be subject to that examination and audit. The failure of a contract to contain this provision shall not preclude the State Auditor from conducting an examination and audit of the contract at the request of the public entity entering into the contract or as part of any audit of the public entity. It is the intent of the Legislature that the Regents of the University of California include in contracts involving the expenditure of state funds in excess of ten thousand dollars ($10,000) a provision stating that the contracting parties shall be subject to the examination and audit of the State Auditor, at the request of the regents or as part of any audit of the university, for a period of three years after final payment under the contract. The examinations and audits under this section shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

8546.8. Unless the contrary is stated or clearly appears from the context, any reference to the Auditor General, the Office of the Auditor General, or the Joint Legislative Audit Committee in any statute or contract in effect on the effective date of this chapter, other than Chapter 4 (commencing with Section 10500), with respect to the performance of audits, shall be construed to refer to the State Auditor, the Bureau of State Audits, and the Milton Marks Commission on California State Government Organization and Economy, respectively.

Appendix E

Government Code Sections 8547- 8547.10
Reporting of Improper Governmental Activities Act

8547. This article shall be known and may be cited as the "Reporting of Improper Governmental Activities Act."

8547.1. It is the intent of the Legislature that state employees and other persons should disclose, to the extent not expressly prohibited by law, improper governmental activities.

8547.2. For the purposes of this article:

(a) "Employee" means any individual appointed by the Governor or employed or holding office in a state agency as defined by Section 11000.

(b) "Improper governmental activity" means any activity by a state agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10, and 8547.11, "improper governmental activity or activities" includes any activity by the University of California or by an employee, including an officer or faculty member, that otherwise meets the criteria of this subdivision.

(c) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(d) "State agency" is defined by Section 11000. "State agency" includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive.

8547.3. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to the State Auditor matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

8547.4. The State Auditor shall administer the provisions of this article and shall investigate and report on improper governmental activities.

8547.5. Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the State Auditor may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of the person providing the information unless the disclosure is to a law enforcement agency that is conducting a criminal investigation.

8547.6. The State Auditor may request the assistance of any state department, agency, or employee in conducting any investigative audit required by this article. If an investigative audit conducted by the State Auditor involves access to confidential academic peer review records of University of California academic personnel, these records shall be provided in a form consistent with university policy effective on August 1, 1992. No information obtained from the State Auditor by any department, agency, or employee as a result of the State Auditor's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

8547.7. (a) If the State Auditor determines that there is reasonable cause to believe that an employee or state agency has engaged in any improper governmental activity, he or she shall report the nature and details of the activity to the head of the employing agency, or the appropriate appointing authority. If appropriate, the State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the State Auditor determines appropriate.

(b) The State Auditor shall not have any enforcement power. In any case in which the State Auditor submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the State Auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 30 days after the date of the State Auditor's report and monthly thereafter until final action has been taken.

(c) Every investigative audit shall be kept confidential, except that the State Auditor may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the state.

(d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

8547.8. (a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts

prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the board, shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for up to a period of one year. Any state civil service employee who intentionally engages in that conduct shall be disciplined by adverse action as provided by Section 19572. If no adverse action is instituted by the appointing power, the State Personnel Board shall invoke adverse action as provided in Section 19583.5.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a) of this section, and the board has failed to reach a decision regarding any hearing conducted pursuant to Section 19683.

(d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities as defined in subdivision (b) of Section 8547.2.

8547.9. Notwithstanding Section 19572, if the State Personnel Board determines that there is a reasonable basis for an alleged violation, or finds an actual violation of Section 8547.3 or 19683, it shall transmit a copy of the investigative report to the State Auditor. All working papers pertaining to the investigative report shall be made available under subpoena in a civil action brought under Section 19683.

8547.10(a) A University of California employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the regents, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having disclosed improper governmental activities, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a University of California employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents.

(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities.

8547.11 (a) A University of California employee, including an officer or faculty member, may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a University of California official, designated for that purpose by the regents, or the State Auditor matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

8547.12. (a) A California State University employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the trustees,

alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having disclosed improper governmental activities, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a California State University employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the trustees. Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.

(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action, or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action.